



**PROPOSED CHANGES TO THE
OECD MODEL TAX
CONVENTION DEALING WITH
THE OPERATION OF SHIPS
AND AIRCRAFT IN
INTERNATIONAL TRAFFIC**

Public discussion draft

15 November 2013 – 15 January 2014

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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. Paragraph 3 of Article 15 deals with the taxation of employees who work on such ships, aircraft and boats. The term “international traffic” is defined in subparagraph 3 e) of Article 3 of the Model Tax Convention.

Working Party 1 on Tax Conventions and Related Questions (which is the subgroup of the OECD Committee on Fiscal Affairs in charge of the Model Tax Convention) has undertaken work aimed at reflecting the current treaty practices of the majority of OECD and non-OECD countries concerning Art. 8 and at addressing issues related to the drafting of Art. 15(3).

This public discussion draft includes proposals for changes to the Model Tax Convention resulting from that work, which primarily concerns international shipping and airline enterprises as well as their employees. Apart from a change proposed to the Introduction, the changes put forward in this discussion draft are not expected to be included in the 2014 Update to the Model Tax Convention.

The Committee invites interested parties to send their comments on this discussion draft **before 15 January 2014**. These comments will be examined at the February and September 2014 meetings of the Working Party.

Comments on this discussion draft should be sent electronically (in Word format) by email to taxtreaties@oecd.org and should be addressed to:

Tax Treaties, Transfer Pricing and Financial Transactions Division
OECD/CTPA

Unless otherwise requested at the time of submission, comments submitted in response to this invitation will be posted on the OECD website.

This document is a discussion draft released for the purpose of inviting comments from interested parties. It does not necessarily reflect the final views of the OECD and its member countries.

PROPOSED CHANGES TO THE OECD MODEL TAX CONVENTION DEALING WITH THE OPERATION OF SHIPS AND AIRCRAFT IN INTERNATIONAL TRAFFIC

Background

1. Working Party 1 on Tax Conventions and Related Questions (which is the subgroup of the OECD Committee on Fiscal Affairs in charge of the Model Tax Convention) has recently undertaken work in relation to Article 8 (Shipping, Inland Waterways Transport and Air Transport) and paragraph 3 of Article 15 (Income from Employment). That work is strictly limited to a modernisation of the wording of Article 8 and to addressing interpretation issues related to paragraph 3 of Article 15; it is not part of any comprehensive review of the treaty provisions applicable to international shipping and airline enterprises.

2. The changes to Article 8 that result from that work are aimed at reflecting the current treaty practices of the majority of OECD and non-OECD countries. A review of the preferences of the OECD and non-OECD countries that participate in the work of Working Party 1 revealed that:

- 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.
- Few countries, and very few outside Europe, wish to include in their treaties the provisions of paragraph 2 of Article 8 dealing with profits from the operation of boats engaged in inland waterways transport.

3. The changes to paragraph 3 of Article 15 are intended to address interpretation issues that arise from the use of the phrase “may be taxed”, which is used in a permissive sense in the Convention and, unlike the words “shall be taxable only”, does not restrict a State’s taxing rights, a general conclusion that the Working Party decided to include in paragraph 25.1 of the Introduction. The changes are also intended to deal with the application of paragraph 3 in triangular cases that might not have been contemplated when the provision was first drafted, *e.g.* where a resident of State A is present in State B for more than 183 days and works aboard a ship or aircraft that an enterprise of State C operates in international traffic. Finally, the changes take into account the fact that the domestic law of many countries does not allow them to tax non-resident employees simply because the employer has its residence or place of effective management in these countries, which means that these countries cannot, in effect, exercise the taxing right provided for in paragraph 3 of Article 15.

4. Other changes have been made to the definition of “international traffic” in subparagraph 3 *e)* of Article 3, to paragraph 2 of Article 6 and to paragraph 3 of Articles 13 and 22 as a consequence of the changes to Article 8 and to paragraph 3 of Article 15.

5. The following are the various changes that are proposed to the Model Tax Convention as a result of the work of the Working Party on these issues. Changes to the existing text of the Model Tax Convention appear in ***bold italics*** for additions and ~~strike through~~ for deletions. Whilst a number of purely consequential changes would also be made to the Introduction and the Commentary if these changes were adopted (*e.g.* to remove the references to boats engaged in inland waterways transport and to replace

phrases such as “the State in which the place of effective management of the enterprise” is situated), these consequential changes have not been included in this discussion draft.

Changes to the Introduction

6. Add the following paragraph immediately after paragraph 25 of the Introduction:

25.1 It follows from the preceding explanations that, throughout the Convention, the words “may be taxed in” a Contracting State mean that that State is granted the right to tax the income to which the relevant provision applies and that these words do not affect the right to tax of the other Contracting State, except through the application of Article 23 A or 23 B when that other State is the State of residence.

Changes to the Articles

7. Replace subparagraph 3 e) of Article 3 by the following:

e) the term “international traffic” means any transport by a ship or aircraft ~~operated by an enterprise that has its place of effective management in a Contracting State,~~ except when the ship or aircraft is operated solely between places in ~~the other a~~ Contracting State **and the enterprise that operates the ship or aircraft is not an enterprise of that State;”**

8. Replace paragraph 2 of Article 6 by the following:

2. The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources; ships, ~~boats~~ and aircraft shall not be regarded as immovable property.

9. Replace Article 8 by the following:

Article 8

INTERNATIONAL SHIPPING, ~~INLAND WATERWAYS TRANSPORT AND AIR~~ ***TRANSPORT***

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

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

10. Replace paragraph 3 of Article 13 by the following:

3. ~~Gains from the alienation of ships or aircraft operated in international traffic, boats engaged in inland waterways transport or movable property pertaining to the operation of such ships, aircraft or boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.~~ ***Gains that an enterprise of a Contracting State that operates ships or aircraft in international traffic derives from the alienation of such ships or aircraft, or from movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.***

11. Replace paragraph 3 of Article 15 by the following:

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 or aircraft operated in international traffic (***other than aboard a ship or aircraft operated solely within the other Contracting State***), ~~or aboard a boat engaged in inland waterways transport, shall be taxable only in that State~~ may be taxed in the Contracting State in which the place of effective management of the enterprise is situated.

12. Replace paragraph 3 of Article 22 by the following:

3. ~~Capital represented by ships and aircraft operated in international traffic and by boats engaged in inland waterways transport, and by movable property pertaining to the operation of such ships, aircraft and boats, shall be taxable only in the Contracting State in which the place of effective management of the enterprise is situated.~~ ***Capital of an enterprise of a Contracting State that operates ships or aircraft in international traffic represented by such ships or aircraft, and by movable property pertaining to the operation of such ships or aircraft, shall be taxable only in that Contracting State.***

Changes to the Commentary

13. Replace paragraphs 5 to 6.3 of the Commentary on Article 3 by the following:

5. The definition of the term “international traffic” is based on the principle set forth in paragraph 1 of Article 8 that the right to tax profits ***of an enterprise of a Contracting State*** from the operation of ships or aircraft in international traffic resides only in ~~the Contracting~~***that State*** in which the place of effective management is situated in view of the special nature of the international traffic business. However, as stated in the Commentary on paragraph 1 of Article 8, the Contracting States are free on a bilateral basis to insert in subparagraph e) a reference to ***the State in which the place of effective management of the enterprise is situated*** residence, in order to be consistent with the general pattern of the other Articles. In such a case, the words “an enterprise that has its place of effective management in a Contracting State” should be replaced by “” or “an enterprise of a Contracting State” or “a resident of a Contracting State” ***definition should read: “the term ‘international traffic’ means any transport by a ship or aircraft except when the ship or aircraft is operated solely between places in a Contracting State in which the enterprise that operates the ship or aircraft does not have its place of effective management”.***

6. The definition of the term “international traffic” is broader than is normally understood. The broader definition is intended to preserve for the State *of the enterprise* ~~of the place of effective management~~ the right to tax purely domestic traffic as well as international traffic between third States, and to allow the other Contracting State to tax traffic solely within its borders. This intention may be clarified by the following illustration. Suppose an enterprise of a Contracting State ~~or an enterprise that has its place of effective management in a Contracting State~~, through an agent in the other Contracting State, sells tickets for a passage that is confined wholly within the first-mentioned State or alternatively, within a third State. The Article does not permit the other State to tax the profits of either voyage. The other State is allowed to tax such an enterprise of the first-mentioned State only where the operations are confined solely to places in that other State.

6.1 *The definition was amended in [2014] to ensure that it also applied to a transport by a ship or aircraft operated by an enterprise of a third State. Whilst this change does not affect the application of Article 8, which only deals with profits of an enterprise of a Contracting State, it allows the application of paragraph 3 of Article 15 to a resident of a Contracting State who derives remuneration from employment exercised aboard a ship or aircraft operated by an enterprise of a third State.*

6.21 A ship or aircraft is operated solely between places in ~~the other~~ *a* Contracting State in relation to a particular voyage if the place of departure and the place of arrival of the ship or aircraft are both in that ~~other Contracting State~~. However, the definition applies where the journey of a ship or aircraft between places in ~~the other Contracting State~~ *a* State forms part of a longer voyage of that ship or aircraft involving a place of departure or a place of arrival which is outside that ~~other Contracting State~~. For example, where, as part of the same voyage, an aircraft first flies between a place in one Contracting State to a place in the other Contracting State and then continues to another destination also located in that other Contracting State, the first and second legs of that trip will both be part of a voyage regarded as falling within the definition of “international traffic”.

6.32 Some States take the view that the definition of “international traffic” should rather refer to a transport as being the journey of a passenger or cargo so that any voyage of a passenger or cargo solely between two places in the same Contracting State should not be considered as covered by the definition even if that voyage is made on a ship or plane that is used for a voyage in international traffic. Contracting States having that view may agree bilaterally to delete the reference to “the ship or aircraft” in the exception included in the definition, so as to use the following definition:

- e) the term “international traffic” means any transport by a ship or aircraft ~~operated by an enterprise that has its place of effective management in a Contracting State~~, except when such transport is solely between places in ~~the other~~ *a* Contracting State **and the enterprise that operates the ship or aircraft is not an enterprise of that State**;

6.43 The definition of “international traffic” does not apply ~~to a transport by an enterprise which has its place of effective management in one Contracting State~~ when ~~at~~ the ship or aircraft is operated between two places in ~~the other State~~ *a Contracting State and the enterprise that operates the ship or aircraft is not an enterprise of that State*, even if part of the transport takes place outside that State. Thus, for example, a cruise beginning and ending in that ~~other State~~ without a stop in a foreign port does not constitute a transport of passengers in international traffic. Contracting States wishing to expressly clarify that point in their conventions may agree bilaterally to amend the definition accordingly.

14. Replace paragraphs 1, 2, 3 and 15 to 24 of the Commentary on Article 8, and the headings above these paragraphs, by the following:

Paragraph 1

1. The object of paragraph 1 concerning profits from the operation of ships or aircraft in international traffic is to secure that such profits will be taxed in one State alone. The provision is based on the principle that the taxing right shall be left to the Contracting State ~~in which the place of effective management of~~ ~~of~~ the enterprise ~~is situated~~. The term “international traffic” is defined in subparagraph e) of paragraph 1 of Article 3.

2. ~~In certain circumstances the Contracting State in which the place of effective management is situated may not be the State of which an enterprise operating ships or aircraft is a resident, and~~ ***Until [year of the Article 8 change], paragraph 1 provided that the taxing right would be left to the Contracting State in which the place of effective management of the enterprise was situated. A review of the treaty practices of OECD and non-OECD countries revealed, however, that the majority of these States preferred to assign the taxing right to the State of the enterprise and the Article was changed accordingly. Some States, however, therefore prefer to continue to use the previous formulation and to confer the exclusive taxing right on the State of in which the place of effective management of the enterprise is situated.*** Such States are free to substitute a rule on the following lines:

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

3. Some other States, on the other hand, prefer to use a combination of the residence criterion and the place of effective management criterion by giving the primary right to tax to the State in which the place of effective management is situated while the State of residence eliminates double taxation in accordance with Article 23, so long as the former State is able to tax the total profits of the enterprise, and by giving the primary right to tax to the State of residence when the State of effective management is not able to tax total profits. States wishing to follow that principle are free to substitute a rule on the following lines:

Profits of an enterprise of a Contracting State from the operation of ships or aircraft, other than those from transport by ships or aircraft operated solely between places in the other Contracting State, shall be taxable only in the first-mentioned State. However, where the place of effective management of the enterprise is situated in the other State and that other State imposes tax on the whole of the profits of the enterprise from the operation of ships or aircraft, the profits from the operation of ships or aircraft, other than those from transport by ships or aircraft operated solely between places in the first-mentioned State, may be taxed in that other State.

3.1 ***States wishing to use the alternative formulations in paragraphs 2 and 3 above may also want to deal with the particular case where the place of effective management of the enterprise is aboard a ship, which could be done by adding the following provision:***

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 [EXISTING PARAGRAPH 3 OF ARTICLE 8]

Operation of boats engaged in inland waterways transport

15. ~~The rules with respect to the taxing right of the State of residence as set forth in paragraphs 2 and 3 above apply also to this paragraph of the Article.~~ ***States wishing to apply the same treatment***

to transport on rivers, canals and lakes as to shipping and air transport in international traffic can do so by including the following provision in their bilateral treaties:

Profits of an enterprise of a Contracting State from the operation of boats engaged in inland waterways transport shall be taxable only in that State.

16. ~~The object of this paragraph is to apply the same treatment to transport on rivers, canals and lakes as to shipping and air transport in international traffic. The provision applies not only to inland waterways transport between two or more countries, but also to inland waterways transport carried on by an enterprise of one country between two points in another country.~~ *The above provision would apply not only to inland waterways transport between two or more countries, but also to inland waterways transport carried on by an enterprise of one State between two points in another State. The alternative formulations set forth in paragraphs 2 and 3 above according to which the taxing right would be granted to the State in which the place of effective management of the enterprise is situated also apply to the above provision. If this alternative provision is used, it would be appropriate to add a reference to “boats engaged in inland waterways transport” in paragraph 3 of Articles 13 and 22 in order to ensure that such boats are treated in the same way as ships and aircraft operated in international traffic (see also paragraph 9.3 of the Commentary on Article 15). Also, the principles and examples included in paragraphs 4 and 14 above would be applicable, with the necessary adaptations, for purposes of determining which profits may be considered to be derived from the operation of boats engaged in inland waterways transport. Specific tax problems which may arise in connection with inland waterways transport, in particular between adjacent countries, could also be settled specially by bilateral agreement.*

~~16.1 Paragraphs 4 to 14 above provide guidance with respect to the profits that may be considered to be derived from the operation of ships or aircraft in international traffic. The principles and examples included in these paragraphs are applicable, with the necessary adaptations, for purposes of determining which profits may be considered to be derived from the operation of boats engaged in inland waterways transport.~~

~~17. The provision does not prevent specific tax problems which may arise in connection with inland waterways transport, in particular between adjacent countries, from being settled specially by bilateral agreement.~~

17. Whilst the above alternative provision uses the word “boat” with respect to inland waterways transport, this reflects a traditional distinction that should not be interpreted to restrict in any way the meaning of the word “ship” used throughout the Convention, which is intended to be given a wide meaning that covers any vessel used for water navigation.

~~18.1 It may also be agreed bilaterally that profits from the operation of vessels engaged in fishing, dredging or hauling activities on the high seas be treated as income falling under this Article.~~

Enterprises not exclusively engaged in shipping or air transport

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 this paragraph 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 to~~ **which** the enterprise **belongs** ~~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 alternative formulation in paragraph 2 above*** ~~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 (a result that is confirmed by paragraph 4 of Article 7).

~~22. This paragraph deals with the particular case where the place of effective management of the enterprise is aboard a ship or a boat. 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 24

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.

15. Replace paragraph 9 of the Commentary on Article 15 by the following:

9. Paragraph 3 applies to the remuneration of crews of ships or aircraft operated in international traffic, ~~or of boats engaged in inland waterways transport,~~ ***and provides that such remuneration shall be taxable only in the State of residence of the employee. The principle of exclusive taxation in the State of residence of the employee was incorporated in the paragraph through a change made in [DATE]. The purpose of that amendment was to provide a clearer and administratively simpler rule concerning the taxation of the remuneration of these crews. [rest of existing paragraph 9 has been moved to paragraphs 9.3 and 9.4]***

9.1 At the same time, the definition of international traffic was modified to ensure that it also applied to a transport by a ship or aircraft operated by an enterprise of a third State. As

explained in paragraph 6.1 of the Commentary on Article 3, this last change allows the application of paragraph 3 of Article 15 to a resident of a Contracting State who derives remuneration from employment exercised aboard a ship or aircraft operated by an enterprise of a third State.

9.2 *[the following is partly based on existing paragraph 9]The provisions of paragraph 3 of Article 15 are based a rule which follows up to a certain extent on the rule applicableed, under Article 8, to profits the income from shipping, inland waterways transport and air transport. The paragraph, however, focuses on remuneration of employees rather than profits of enterprises, which explains why the paragraph gives the right to tax to the State of residence of the employees.*

9.3 *As explained in paragraph 15 of the Commentary on Article 8, States wishing to apply the same treatment to transport on rivers, canals and lakes as to shipping and air transport in international traffic may extend the scope of Article 8 to cover profits from the operation of boats engaged in inland waterways transport. These States could then wish to apply paragraph 3 of Article 15 to the remuneration of employees working on these boats. In the case of the remuneration derived by an employee working aboard a boat engaged in inland waterways transport, however, paragraph 3 should only apply to the extent that the boat is operated by an enterprise of the State of residence of the employee. It would indeed be inappropriate for one Contracting State to be required to exempt remuneration derived by an employee who is a resident of the other State but is employed by an enterprise of the first-mentioned State (or of a third State with which the first-mentioned State did not agree to exempt profits derived from the operation of boats engaged in inland waterways transport) where that remuneration relates to activities exercised solely in that first-mentioned State. Contracting States wishing to address this issue could do so by including in their bilateral treaty a separate provision dealing with crews of boats engaged in inland waterways transport that would be drafted as follows:*

Notwithstanding the preceding provisions of this Article and of Article 1, remuneration derived by an individual, whether a resident of a Contracting State or not, in respect of an employment aboard a boat engaged in inland waterways transport in a Contracting State and operated by an enterprise of the other State shall be taxable only in that other State. However, such remuneration may also be taxed in the first-mentioned State if it is derived by a resident of that State.

9.4 *[the following deleted part is currently in existing paragraph 9]In the Commentary on Article 8, it is indicated that Contracting States may agree to confer the right to tax such income on the State of the enterprise operating the ships, boats or aircraft. The reasons for introducing that possibility in the case of profits income from shipping, inland waterways and air transport operations are valid also in respect of remuneration of the crew. Accordingly Contracting States are left free to agree on a provision which gives the right to tax such remuneration to the State of the enterprise. Such a provision, as well as that of paragraph 3 of Article 15, assumes that the domestic laws of the State on which the right to tax is conferred allows it to tax the remuneration of a person in the service of the enterprise concerned, irrespective of his residence. As indicated in paragraph 2 of the Commentary on Article 8, some States may prefer to attribute the exclusive right to tax profits from shipping and air transport to the State in which the place of effective management of the enterprise is situated rather than the State of residence. Where the Contracting States follow that approach, a similar change should be made to the alternative provisions included in paragraphs 9.3 above and 9.5 below if these provisions are used.*

9.5 *Some States prefer to allow taxation of the remuneration of an employee who works aboard a ship or aircraft operated in international traffic both by the State of the enterprise that*

operates such ship or aircraft and the State of residence of the employee. States wishing to do so may draft paragraph 3 along the following lines:

3. Notwithstanding the preceding provisions of this Article and Article 1, remuneration derived by an individual, whether a resident of a Contracting State or not, in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State shall be taxable only in that Contracting State. Where, however, such remuneration is derived by a resident of the other Contracting State, it may also be taxed in that other State.

9.6 Some States wishing to apply that approach may also wish to restrict the application of paragraph 3 to employees who are residents of one of the Contracting States, which could be done by using the following wording:

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 or aircraft operated in international traffic shall be taxable only in that State. Where, however, the ship or aircraft is operated by an enterprise of the other Contracting State, such remuneration may also be taxed in the other State.”

9.7 According to the alternative provision in paragraph 9.5 above, the Contracting State of the enterprise has the primary right to tax the remuneration of the employee. Where the employee is a resident of the other Contracting State, the remuneration may also be taxed in that other State, subject to the obligation of that State to provide relief of double taxation under the provisions of Article 23 A or 23 B.

9.8 Since that alternative provision allows taxation in the State of the enterprise that operates the ship or aircraft, it may help to address the situation of employees who work extensively aboard ships or aircraft operated in international traffic and who may find it advantageous to establish their residence in States that levy no or little tax on the employment income derived from such work performed outside their territory. The provision assumes, however, that the Contracting States have the possibility, under their domestic law, to tax the remuneration of employees working aboard ships or aircraft operated in international traffic solely because the enterprises that operate these ships or aircraft are enterprises of these States. Where this is not the case, the use of that provision in combination with the exemption method for the elimination of double taxation would create a risk of non-taxation. Assume, for instance, that the above provision has been included in a treaty between States R and S, that State R follows the exemption method and that an employee who is a resident of State R works on flights between State R and third States operated by an airline that is an enterprise of State S. In that case, if the domestic law of State S does not allow State S to tax the remuneration of employees of the airline who are not residents of, and do not work in, State S, State S will be unable to exercise the taxing right that has been allocated to it but State R will be required to exempt such remuneration because, under the provisions of the Convention, State S has the right to tax that remuneration.

9.9 [the following is the last part of existing paragraph 9] As explained in paragraph 3.1 of the Commentary on Article 8, it may be provided that the reference to the “place of effective management” in the alternative provisions in paragraphs 2 and 3 of Article 8 is applicable if the place of effective management of a shipping enterprise ~~or of an inland waterways transport enterprise~~ is aboard a ship ~~or a boat~~. According to the domestic laws of some ~~member~~ countries, tax is levied on remuneration received by non-resident members of the crew in respect of employment aboard ships only if the ship has the nationality of such a State. For that reason

conventions concluded between these States provide that the right to tax such remuneration is given to the State of the nationality of the ship. On the other hand many States cannot make use of such a taxation right and the provision could in such cases lead to *a non-taxation situation similar to the one described in the preceding paragraph*. However, States having that taxation principle in their domestic laws may agree bilaterally to confer the right to tax remuneration in respect of employment aboard ships on the State of the nationality of the ship.