

ARTICLE 8

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

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 of the enterprise. The term “international traffic” is defined in subparagraph e) of paragraph 1 of Article 3.

1. For the purposes of this Convention, unless the context otherwise requires:
 - e) 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 and the enterprise that operates the ship or aircraft is not an enterprise of that State;

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 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.

6.2 A ship or aircraft is operated solely between places in a 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 State. However, the definition applies where the journey of a ship or aircraft between places in 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 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”.

6.4 The definition of “international traffic” does not apply when a ship or aircraft is operated between two places in 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 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.

II.H.1 DTC business articles – Article 8 International shipping and air transport

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2. Until 2017, 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

4 shipping and air transport enterprises invariably carry on a large variety of activities to permit, facilitate or support their international traffic operations. The paragraph also covers profits from activities directly connected with such operations as well as profits from activities which are not directly connected with the operation of the enterprise's ships or aircraft in international traffic as long as they are ancillary to such operation.

14.1 Enterprises engaged in the operation of ships or aircraft in international traffic may be required to acquire and use emissions permits and credits for

Paragraph 1 applies to income derived by such enterprises with respect to such permits and credits where such income is an integral part of carrying on the

4.1 Any activity carried on primarily in connection with the transportation, by the enterprise, of passengers or cargo by ships or aircraft that it operates in international traffic should be considered to be directly connected with such transportation.

4.2 Activities 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.

5. Profits obtained by leasing a ship or aircraft on charter fully equipped, crewed and supplied must be treated like the profits from the carriage of passengers or cargo. Otherwise, a great deal of business of shipping or air transport would not come within the scope of the provision. However, Article 7, and not Article 8, applies to profits from leasing a ship or aircraft on a bare boat charter basis except when it is an ancillary activity of an enterprise engaged in the international operation of ships or aircraft.

9. Containers are used extensively in international transport. Such containers frequently are also used in inland transport. Profits derived by an enterprise engaged in international transport from the lease of containers are usually either directly connected or ancillary to its operation of ships or aircraft in international traffic and in such cases fall within the scope of the paragraph. The same conclusion would apply with respect to profits derived by such an enterprise from the short-term storage of such containers (e.g. where the enterprise charges a customer for keeping a loaded container in a warehouse pending delivery) or from detention charges for the late return of containers.

12. The paragraph does not apply to a shipbuilding yard

