

**POSITIONS ON ARTICLE 8
(SHIPPING, INLAND WATERWAYS
TRANSPORT AND AIR TRANSPORT)
AND ITS COMMENTARY**

Positions on the Article

1. Armenia, Latvia and Lithuania reserve the right in exceptional cases to apply the permanent establishment rule in relation to profits derived from the operation of ships in international traffic.

(Amended on 17 July 2008; see HISTORY)

Paragraph 1

2. The Philippines reserves the right to provide for taxation of the profits from shipping and air transport in accordance with domestic law.

(Added on 23 October 1997; see HISTORY)

2.1 Indonesia reserves the right to allow the State of source to tax profits from the operation of ships in international traffic provided that the shipping activities arising from such operation in that State are more than casual and subject to certain limits.

(Added on 22 July 2010; see HISTORY)

3. Albania, Argentina and Bulgaria reserve the right to tax profits from the carriage of passengers or cargo taken on board at one place in a respective country for discharge at another place in the same country.

(Amended on 15 July 2014; see HISTORY)

4. South Africa reserves the right to include in paragraph 1 profits from the leasing of containers.

(Added on 23 October 1997; see HISTORY)

4.1 Azerbaijan reserves the right to include a provision which provides for taxation of the profits from the leasing of containers in the same way as the profits from international transportation when such profits are supplementary or incidental to international transportation.

(Added on 15 July 2014; see HISTORY)

5. Thailand reserves the right to provide for taxation of the profits from shipping in accordance with domestic law.

(Added on 23 October 1997; see HISTORY)

5.1 India reserves the right to apply Article 12 and not Article 8 to profits from leasing ships or aircraft on a bare charter basis.

(Added on 17 July 2008; see HISTORY)

6. Latvia, South Africa and Ukraine reserve the right to include a provision that will ensure that profits from the leasing of ships or aircraft on a bare boat basis and, in the case of Latvia and Ukraine, from the leasing of containers, will be treated in the same way as income covered by paragraph 1 when such profits are incidental to international transportation.

(Amended on 15 July 2014; see HISTORY)

6.1 Bulgaria, Croatia, Russia and South Africa reserve the right to extend the scope of the Article to cover international road and railway transportation in bilateral conventions.

(Amended on 17 July 2008; see HISTORY)

6.2 Morocco reserves the right to provide for taxation of profits derived by an enterprise engaged in international transport from the lease of containers which is supplementary or incidental to its international operation of ships or aircraft fall within the scope of this Article.

(Added on 28 January 2003; see HISTORY)

6.3 Serbia reserves the right, in the course of negotiations, to propose that the leasing of containers, even if directly connected or ancillary, be regarded as an activity separate from international shipping or aircraft operations, and consequently be excluded from the scope of the Article.

(Amended on 17 July 2008; see HISTORY)

6.4 Serbia reserves the right to extend the scope of the Article to cover international road transportation in bilateral conventions.

(Amended on 17 July 2008; see HISTORY)

6.5 Vietnam reserves the right to provide that the taxing right with respect to income derived from international transportation shall be shared 50/50.

(Added on 17 July 2008; see HISTORY)

6.6 The United Arab Emirates reserves the right to include in its bilateral conventions a provision to confirm that income from selling tickets on behalf of other enterprises, income derived from selling technical services to third parties, income from bank deposits and other investments, such as bonds, shares and other debentures, are covered by Article 8 provided that this income is incidental to the operation of air transport enterprises operating in international traffic.

(Amended on 15 July 2014; see HISTORY)

Paragraph 2

7. Albania, Argentina, Azerbaijan, Brazil, Colombia, Gabon, Georgia, India, Latvia, Malaysia, Morocco, the People's Republic of China, South Africa and Hong Kong, China reserve the right not to extend the scope of the Article to cover inland waterways transportation in bilateral conventions and are free to make corresponding modifications to paragraph 3 of Articles 13, 15 and 22.

(Amended on 15 July 2014; see HISTORY)

P (8)

Positions on the Commentary

8. Vietnam disagrees with the interpretation presented in paragraph 5 of the Commentary.

(Added on 23 October 1997; see HISTORY)

9. Vietnam disagrees with the interpretation presented in paragraph 10 of the Commentary in relation to the incidental leasing of containers.

(Added on 23 October 1997; see HISTORY)

10. Brazil, India and Malaysia reserve their position on the application of this Article to income from ancillary activities (see paragraphs 4 to 10.1).

(Amended on 17 July 2008; see HISTORY)

11. Singapore reserves its position on the application of this Article to income from ancillary activities. It takes the view that Article 8 does not cover any ancillary activities that are not expressly mentioned in Singapore's tax conventions.

(Added on 15 July 2014; see HISTORY)

12. India does not agree with the view that income derived by an enterprise from trading of emission permits and credits in the example given in paragraph 14.1 would be covered by Article 8.

(Added on 15 July 2014; see HISTORY)

HISTORY

Paragraph 1: Amended on 17 July 2008, by changing the list of countries indicating the position to add Armenia and delete Estonia, by the report entitled "The 2008 Update to the Model Tax Convention", adopted by the OECD Council on 17 July 2008. After 23 October 1997 and until 17 July 2008, paragraph 1 read as follows:

"1. Estonia, Latvia and Lithuania reserve the right in exceptional cases to apply the permanent establishment rule in relation to profits derived from the operation of ships in international traffic."

Paragraph 1 was included when this section was added in 1997 by the report entitled "The 1997 Update to the Model Tax Convention", adopted by the OECD Council on 23 October 1997.

Paragraph 2: Included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 2.1: Added on 22 July 2010 by the report entitled the “2010 Update to the Model Tax Convention” adopted by the OECD Council on 22 July 2010.

Paragraph 3: Amended on 15 July 2014, by adding Argentina to the list of countries indicating the position, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 28 January 2003 and until 15 July 2014, paragraph 3 read as follows:

“3. Albania and Bulgaria reserve the right to tax profits from the carriage of passengers or cargo taken on board at one place in a respective country for discharge at another place in the same country.”

Paragraph 3 was replaced on 28 January 2003 when it was deleted and a new paragraph 3 was added by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 3 read as follows:

“3. Slovakia reserves the right to tax under Article 12 profits from the leasing of ships, aircraft and containers.”

Paragraph 3 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 4: Included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 4.1: Added on 15 July 2014 by the report entitled “The 2014 Update to the Model Tax Convention” adopted by the Council on 15 July 2014.

Paragraph 5: Included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 5.1: Added on 17 July 2008 by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008.

Paragraph 6: Amended on 15 July 2014, by deleting Bulgaria from the list of countries indicating the position, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 22 July 2010 and until 15 July 2014, paragraph 6 read as follows:

“6. Bulgaria, Latvia, South Africa and Ukraine reserve the right to include a provision that will ensure that profits from the leasing of ships or aircraft on a bare boat basis and, in the case of Bulgaria, Latvia and Ukraine, from the leasing of containers, will be treated in the same way as income covered by paragraph 1 when such profits are incidental to international transportation.”

Paragraph 6 was previously amended on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 6 read as follows:

“6. Bulgaria, Latvia, South Africa and Ukraine reserve the right to include a provision that will ensure that profits from the leasing of ships or aircraft on a bare boat basis and, in the case of Bulgaria and Ukraine, from the leasing of containers, will be treated in the same way as income covered by paragraph 1 when such profits are incidental to international transportation.”

Paragraph 6 was previously amended on 17 July 2008, by adding Latvia to the list of countries indicating the position, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 28 January 2003 and until 17 July 2008, paragraph 6 read as follows:

“6. *Bulgaria, South Africa and Ukraine* reserve the right to include a provision that will ensure that profits from the leasing of ships or aircraft on a bare boat basis and, in the case of Bulgaria and Ukraine, from the leasing of containers, will be treated in the same way as income covered by paragraph 1 when such profits are incidental to international transportation.”

Paragraph 6 was previously amended on 28 January 2003, by adding Bulgaria to the list of countries indicating the position, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 23 October 1997 and until 28 January 2003, paragraph 6 read as follows:

“6. *South Africa and Ukraine* reserve the right to include a provision that will ensure that profits from the leasing of ships or aircraft on a bare boat basis and, in the case of Ukraine, from the leasing of containers, will be treated in the same way as income covered by paragraph 1 when such profits are incidental to international transportation.”

Paragraph 6 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 6.1: Amended on 17 July 2008, by adding Russia to the list of countries indicating the position, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 6.1 read as follows:

“6.1 *Bulgaria, Croatia and South Africa* reserve the right to extend the scope of the Article to cover international road and railway transportation in bilateral conventions.”

Paragraph 6.1 was previously amended on 15 July 2005, by adding South Africa to the list of countries indicating the position, by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005. After 28 January 2003 and until 15 July 2005, paragraph 6.1 read as follows:

“6.1 *Bulgaria and Croatia* and reserve the right to extend the scope of the Article to cover international road and railway transportation in bilateral conventions.”

Paragraph 6.1 was added on 28 January 2003, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003.

Paragraph 6.2: Added on 28 January 2003 by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003.

Paragraph 6.3: Amended on 17 July 2008, by replacing Serbia and Montenegro with Serbia as a country indicating the position, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 6.3 read as follows:

“6.3 *Serbia and Montenegro* reserves the right, in the course of negotiations, to propose that the leasing of containers, even if directly connected or ancillary, be regarded as an activity separate from international shipping or aircraft operations, and consequently be excluded from the scope of the Article.”

Paragraph 6.3 was added on 15 July 2005 by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005.

Paragraph 6.4: Amended on 17 July 2008, by replacing Serbia and Montenegro with Serbia as a country indicating the position, by the report entitled “The 2008 Update to

the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 6.4 read as follows:

“6.4 *Serbia and Montenegro* reserves the right to extend the scope of the Article to cover international road transportation in bilateral conventions.”

Paragraph 6.4 was added on 15 July 2005 by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005.

Paragraph 6.5: Added on 17 July 2008 by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008.

Paragraph 6.6: Added on 22 July 2010 by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010.

Paragraph 7: Amended on 15 July 2014, by changing the list of countries indicating the position by adding Azerbaijan, Colombia and Georgia and deleting Estonia, by the Report entitled “The 2014 Update to the Model Tax Convention”, adopted by the Council of the OECD on 15 July 2014. After 22 July 2010 and until 15 July 2014, paragraph 7 read as follows:

“7. *Albania, Argentina, Brazil, Estonia, Gabon, India, Latvia, Malaysia, Morocco, the People’s Republic of China, South Africa and Hong Kong, China* reserve the right not to extend the scope of the Article to cover inland waterways transportation in bilateral conventions and are free to make corresponding modifications to paragraph 3 of Articles 13, 15 and 22.”

Paragraph 7 was previously amended on 22 July 2010, by changing the list of countries indicating the position by adding Hong Kong, China and deleting Chile and Slovenia, by the report entitled “The 2010 Update to the Model Tax Convention”, adopted by the OECD Council on 22 July 2010. After 17 July 2008 and until 22 July 2010, paragraph 7 read as follows:

“7. *Albania, Argentina, Brazil, Chile, Estonia, Gabon, India, Latvia, Malaysia, Morocco, the People’s Republic of China, Slovenia and South Africa* reserve the right not to extend the scope of the Article to cover inland waterways transportation in bilateral conventions and are free to make corresponding modifications to paragraph 3 of Articles 13, 15 and 22.”

Paragraph 7 was previously amended on 17 July 2008, by clarifying the position in respect of corresponding modifications to paragraph 3 of Articles 13, 15 and 22 and by changing the list of countries making the position to add Chile, India and Latvia, delete Vietnam and replace “China” with “the People’s Republic of China”, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 28 January 2003 and until 17 July 2008, paragraph 7 read as follows:

“7. *Albania, Argentina, Brazil, China, Estonia, Gabon, Malaysia, Morocco, Slovenia, South Africa and Vietnam* reserve the right not to extend the scope of the Article to cover inland waterways transportation in bilateral conventions.”

Paragraph 7 was previously amended on 28 January 2003, by adding Albania, Gabon, Morocco and Slovenia to the list of countries indicating the position and by adding the word “waterways”, by the report entitled “The 2002 Update to the Model Tax Convention”, adopted by the OECD Council on 28 January 2003. After 29 April 2000 and until 28 January 2003, paragraph 7 read as follows:

“7. *Argentina, Brazil, China, Estonia, Malaysia, South Africa and Vietnam* reserve the right not to extend the scope of the Article to cover inland transportation in bilateral conventions.”

Paragraph 7 was previously amended on 29 April 2000, by adding Argentina and Estonia to the list of countries indicating the position, by the report entitled “The 2000

Update to the Model Tax Convention”, adopted by the OECD Council on 29 April 2000. After 23 October 1997 and until 29 April 2000, paragraph 7 read as follows:

“7. Brazil, China, Malaysia, South Africa and Vietnam reserve the right not to extend the scope of the Article to cover inland transportation in bilateral conventions.”

Paragraph 7 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 8: Paragraph 8 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

Paragraph 9: Paragraph 9 was included when this section was added in 1997 by the report entitled “The 1997 Update to the Model Tax Convention”, adopted by the OECD Council on 23 October 1997.

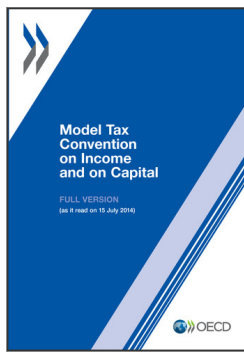
Paragraph 10: Amended on 17 July 2008, by adding India to the list of countries indicating the position, by the report entitled “The 2008 Update to the Model Tax Convention”, adopted by the OECD Council on 17 July 2008. After 15 July 2005 and until 17 July 2008, paragraph 10 read as follows:

“10. Brazil and Malaysia reserve their position on the application of this Article to income from ancillary activities (cf. paragraphs 4 to 10.1).”

Paragraph 10 was added by the report entitled “The 2005 Update to the Model Tax Convention”, adopted by the OECD Council on 15 July 2005.

Paragraph 11: Added on 15 July 2014 by the report entitled “The 2014 Update to the Model Tax Convention” adopted by the Council on 15 July 2014.

Paragraph 12: Added on 15 July 2014 by the report entitled “The 2014 Update to the Model Tax Convention” adopted by the Council on 15 July 2014.



From:
**Model Tax Convention on Income and on Capital
2014 (Full Version)**

Access the complete publication at:
<https://doi.org/10.1787/9789264239081-en>

Please cite this chapter as:

OECD (2015), "Positions on Article 8 (Shipping, Inlandwaterways Transport and Air Transport) and its commentary", in *Model Tax Convention on Income and on Capital 2014 (Full Version)*, OECD Publishing, Paris.

DOI: <https://doi.org/10.1787/9789264239081-73-en>

This work is published under the responsibility of the Secretary-General of the OECD. The opinions expressed and arguments employed herein do not necessarily reflect the official views of OECD member countries.

This document and any map included herein are without prejudice to the status of or sovereignty over any territory, to the delimitation of international frontiers and boundaries and to the name of any territory, city or area.

You can copy, download or print OECD content for your own use, and you can include excerpts from OECD publications, databases and multimedia products in your own documents, presentations, blogs, websites and teaching materials, provided that suitable acknowledgment of OECD as source and copyright owner is given. All requests for public or commercial use and translation rights should be submitted to rights@oecd.org. Requests for permission to photocopy portions of this material for public or commercial use shall be addressed directly to the Copyright Clearance Center (CCC) at info@copyright.com or the Centre français d'exploitation du droit de copie (CFC) at contact@cfcopies.com.