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**Article 8 (Shipping, inland waterways transport and air transport):
“profits from the operation of ships or aircraft in international traffic”**

Secretariat Note: Proposed Changes to the UN Model Double Taxation
Convention Commentary on Articles 3 and 8

Summary

This paper represents proposed changes to the Commentary on Articles 3 (Part A of the paper) and 8 (Part B of the paper) of the UN Model Double Taxation Convention as a result of discussions in the *Subcommittee on Article 8: International Transportation Issues*. The paper includes proposed changes presented at the twelfth session of the Committee in October 2016, and fresh proposals made to the thirteenth session.

While this paper is almost entirely the consensus work of that Subcommittee, there are some unconcluded discussions in the Subcommittee and this paper should therefore not be taken as necessarily reflecting consensus decisions in every respect. The paper is presented for the guidance and agreement of the Committee, with a view to including updated commentary to Articles 3 and 8 in the forthcoming update of the UN Model Tax Convention.

This paper addresses issues related to, but distinct from, the issues dealt with in agenda item 3 (a) (ii) – “Presentation by OECD representative on OECD Model changes relating to international traffic and possible similar changes to the UN Model” and its accompanying paper ([E/C.18/2016/CRP.17](#))

Proposed Changes to the UN Model Double Taxation Convention Commentary
on Articles 3 and 8

Part A: Proposed Change to Commentary on Article 3 (1) (d) (with additions highlighted in bold text. *Italicised bold text* represents text new to the thirteenth session)

8. As also noted in the OECD Commentary, “[t]he definition of the term “international traffic” is broader than the term is normally understood [in order] to preserve for the State 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”. **A ship or aircraft is operated solely between places in the other Contracting State in relation to a particular voyage if the place of departure and the place of arrival of the ship are both in that other Contracting State. Thus, for example, a cruise beginning and ending in that other Contracting State without a stop in a foreign port does not constitute a transport of passengers in international traffic. Conversely, a cruise beginning and ending in that other Contracting State with a stop in a foreign port constitutes a transport of passengers in international traffic. *For this purpose, a “stop” has taken place if embarkation and disembarkation of passengers is enabled, even when passengers are permitted to go ashore temporarily.***

Part B: Proposed Change to Commentary on Article 8 (with deletions in ~~strikeout~~ and additions highlighted in **bold text**. *Italicised bold text* represents text new to this session)

Article 8

SHIPPING, INLAND WATERWAYS TRANSPORT AND AIR TRANSPORT

A. General considerations

1. Two alternative versions are given for Article 8 of the United Nations Model Convention, namely Article 8 (alternative A) and Article 8 (alternative B). Article 8 (alternative A) reproduces Article 8 of the OECD Model Convention. Article 8 (alternative B) introduces substantive changes to Article 8 (alternative A), dealing separately with profits from the operation of aircraft and profits from the operation of ships in paragraphs 1 and 2, respectively. The remaining paragraphs (3, 4 and 5) reproduce paragraphs 2, 3 and 4 of Article 8 (alternative A) with a minor adjustment in paragraph 5.

2. With regard to the taxation of profits from the operation of ships in international traffic, many countries support the position taken in Article 8 (alternative A). In their view, shipping enterprises should not be exposed to the tax laws of the numerous countries to which their operations extend; taxation at the place of effective management was also preferable from the viewpoint of the various tax administrations. They argued that if every country taxed a portion of the profits of a shipping line, computed according to its own rules, the sum of those portions might well exceed the total income of the enterprise. Consequently, that would constitute a serious problem, especially because taxes in developing countries could be excessively high, and the total profits of shipping enterprises were frequently quite modest.

3. Other countries asserted that they were not in a position to forgo even the limited revenue to be derived from taxing foreign shipping enterprises as long as their own shipping industries were not more fully developed. They recognized, however, that considerable difficulties were involved in determining a taxable profit in such a situation and allocating the profit to the various countries concerned in the course of the operation of ships in international traffic.

4. Since no consensus could be reached on a provision concerning the taxation of shipping profits, the use of two alternatives in the Model Convention is proposed and the question of such taxation should be left to bilateral negotiations.

5. Although the texts of Article 8 (alternatives A and B) both refer to the “place of effective management of the enterprise”, some countries may wish to refer instead to the “State of residence of the enterprise”.

6. Although there was a consensus to recommend Articles 8 (alternatives A and B) as alternatives, some countries who could not agree to Article 8 (alternative A) also could not agree to Article 8 (alternative B) because of the phrase “more than casual”. They argued that some countries might wish to tax either all shipping profits or all airline profits, and acceptance of Article 8 (alternative B) might thus lead to a revenue loss, considering the limited number of shipping companies or airlines whose effective management was situated in those countries. Again, in such cases taxation should be left to bilateral negotiations.

7. Depending on the frequency or volume of cross-border traffic, countries may, during bilateral negotiations, wish to extend the provisions of Article 8 to cover rail or road transport.

8. Some countries consider that the activity of transport carried out in inland waters, by definition, cannot be considered international transport and, by virtue of that, the fiscal or tax power should be attributed exclusively to the source country in which the activities are carried out. Since Article 8 deals with “Shipping, inland waterways transport and air transport”, obviously all three modes of transport dealt with in this Article involve problems of double taxation. Income derived from inland waterways transport is also subject to double taxation if a river or lake used for commercial transportation flows from more than one country with the headquarters of the establishment in one country and traffic originating in more than one country. Hence, it is possible that inland waterways transport would give rise to problems of double taxation.

B. COMMENTARY ON THE PARAGRAPHS OF ARTICLE 8 (ALTERNATIVES A AND B)

Paragraph 1 of Article 8 (alternative A)

9. This paragraph, which reproduces Article 8, paragraph 1, of the OECD Model Convention, has the objective of ensuring that profits from the operation of ships or aircraft in international traffic will be taxed in one State alone. The paragraph’s effect is that these profits are wholly exempt from tax at source and are taxed exclusively in the State in which the place of effective management of the enterprise engaged in international traffic is situated. It provides an independent operative rule for these activities and is not qualified by

Articles 5 and 7 relating to business profits governed by the permanent establishment rule. The exemption from tax in the source country is predicated largely on the premise that the income of these enterprises is earned on the high seas, that exposure to the tax laws of numerous countries is likely to result in double taxation or at best in difficult allocation problems, and that exemption in places other than the home country ensures that the enterprises will not be taxed in foreign countries if their overall operations turn out to be unprofitable. Considerations relating to international air traffic are similar. Since a number of countries with water boundaries do not have resident shipping companies but do have ports used to a significant extent by ships from other countries, they have traditionally disagreed with the principle of such an exemption of shipping profits and would argue in favour of alternative B.

10. The Commentary on the OECD Model Convention notes that the place of effective management may be situated in a country different from the country of residence of an enterprise operating ships or aircraft and that “[...] some States therefore prefer to confer the exclusive taxing right on the State of residence”. The Commentary suggests that States may, in bilateral negotiations, 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 State.” The Commentary continues:

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.

~~4. The profits covered consist in the first place of the profits obtained by the enterprise from the carriage of passengers or cargo. With this definition, however, the provision would be unduly restrictive, in view of the development of shipping and air transport, and for practical considerations also. The provision therefore~~

~~covers other classes of profits as well, i.e. those which by reason of their nature or their close relationship with the profits directly obtained from transport may all be placed in a single category. Some of these classes of profits are mentioned in the following paragraphs [quoted paragraph 4 is taken from the Commentary on Article 8 as it read in the 2003 version of the OECD Model Convention].~~

[Note to Committee: removed to UN Commentary para 10.1 below in its updated form]

10.1 Referring to the meaning of the term “profits from the operation of ships or aircraft in international traffic”, the Commentary on the 2014 OECD Model Convention sets down two categories of profits which should fall within the scope of paragraph 1 of Article 8. The first relates to profits directly obtained by the enterprise from the carriage of passengers or cargo in international traffic, and the second to profits from activities to permit, facilitate or support international traffic operations. Within the second category the Commentary distinguishes two different types of activities: those directly connected with such operations and those not directly connected but “ancillary” to such operations. The Commentary notes as follows:

4. The profits covered consist in the first place of the profits directly obtained by the enterprise from the transportation of passengers or cargo by ships or aircraft (whether owned, leased or otherwise at the disposal of the enterprise) that it operates in international traffic. However, as international transport has evolved, 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.

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.

11. Applying the principles set out above, the Commentary on the ~~2003~~**2014** OECD Model Convention deals with a number of activities in relation to the extent to which paragraph 1

will apply when those activities are carried on by an enterprise engaged in the operation of ships or aircraft in international traffic. The Commentary notes as follows:

5. Profits obtained by leasing a ship or aircraft on charter fully equipped, **manned 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 [12], and not Article 8, applies to profits from leasing a ship or aircraft on a bare boat charter basis except when it is an ~~occasional source of income for~~ **ancillary activity of** an enterprise engaged in the international operation of ships or aircraft.

~~6.—The principle that the taxing right should be left to one Contracting State alone makes it unnecessary to devise detailed rules, e.g. for defining the profits covered, this being rather a question of applying general principles of interpretation.~~

~~7.—Shipping and air transport enterprises—particularly the latter—often engage in additional activities more or less closely connected with the direct operation of ships and aircraft. Although it would be out of the question to list here all the auxiliary activities which could properly be brought under the provision, nevertheless a few examples may usefully be given.~~

~~8.—The provision applies, inter alia, to the following activities:~~

- ~~a) — the sale of passage tickets on behalf of other enterprises;~~
- ~~b) — the operation of a bus service connecting a town with its airport;~~
- ~~c) — advertising and commercial propaganda;~~
- ~~d) — transportation of goods by truck connecting a depot with a port or airport.~~

~~9.—If an enterprise engaged in international transport undertakes to see to it that, in connection with such transport, goods are delivered directly to the consignee in the other Contracting State, such inland transportation is considered to fall within the scope of the international operation of ships or aircraft and, therefore, is covered by the provisions of this Article.~~

~~10.—Recently, “containerisation” has come to play an increasing role in the field of 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 which is supplementary or incidental to its international operation of ships or aircraft fall within the scope of this Article. [Note to Committee: see revised version at para. 9 below.]~~

6. Profits derived by an enterprise from the transportation of passengers or cargo otherwise than by ships or aircraft that it operates in international traffic are covered by the paragraph to the extent that such transportation is directly connected with the operation, by that enterprise, of ships or aircraft in

international traffic or is an ancillary activity. One example would be that of an enterprise engaged in international transport that would have some of its passengers or cargo transported internationally by ships or aircraft operated by other enterprises, e.g. under code-sharing or slot chartering [Note to Subcommittee and Committee: secretariat has amended from “slotchartering”] arrangements or to take advantage of an earlier sailing. Another example would be that of an airline company that operates a bus service connecting a town with its airport primarily to provide access to and from that airport to the passengers of its international flights.

7. A further example would be that of an enterprise that transports passengers or cargo by ships or aircraft operated in international traffic which undertakes to have those passengers or that cargo picked up in the country where the transport originates or transported or delivered in the country of destination by any mode of inland transportation operated by other enterprises. In such a case, any profits derived by the first enterprise from arranging such transportation by other enterprises are covered by the paragraph even though the profits derived by the other enterprises that provide such inland transportation would not be.

8. An enterprise will frequently sell tickets on behalf of other transport enterprises at a location that it maintains primarily for purposes of selling tickets for transportation on ships or aircraft that it operates in international traffic. Such sales of tickets on behalf of other enterprises will either be directly connected with voyages aboard ships or aircraft that the enterprise operates (e.g. sale of a ticket issued by another enterprise for the domestic leg of an international voyage offered by the enterprise) or will be ancillary to its own sales. Profits derived by the first enterprise from selling such tickets are therefore covered by the paragraph.

8.1 Advertising that the enterprise may do for other enterprises in magazines offered aboard ships or aircraft that it operates or at its business locations (e.g. ticket offices) is ancillary to its operation of these ships or aircraft and profits generated by such advertising fall within the paragraph.

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 ~~which is supplementary or incidental to its international operation of ships or aircraft~~ fall within the scope of this Article 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.

~~11. On the other hand, the provision does not cover a clearly separate activity such as the keeping of a hotel as a separate business; the profits from such an establishment are in any case easily determinable. In certain cases, however, circumstances are such that the provision must apply even to a hotel business e.g. the keeping of a hotel for no other purpose than to provide transit passengers with night accommodation, the cost of such a service being included in the price of the passage ticket. In such a case, the hotel can be regarded as a kind of waiting room.~~

~~12. There is another activity which is excluded from the field of application of the provision, namely~~

10. An enterprise that has assets or personnel in a foreign country for purposes of operating its ships or aircraft in international traffic may derive income from providing goods or services in that country to other transport enterprises. This would include (for example) the provision of goods and services by engineers, ground and equipment maintenance staff, cargo handlers, catering staff and customer services personnel. Where the enterprise provides such goods to, or performs services for, other enterprises and such activities are directly connected or ancillary to the enterprise's operation of ships or aircraft in international traffic, the profits from the provision of such goods or services to other enterprises will fall under the paragraph.

10.1 For example, enterprises engaged in international transport may enter into pooling arrangements for the purposes of reducing the costs of maintaining facilities needed for the operation of their ships or aircraft in other countries. For instance, where an airline enterprise agrees, under an International Airlines Technical Pool agreement, to provide spare parts or maintenance services to other airlines landing at a particular location (which allows it to benefit from these services at other locations), activities carried on pursuant to that agreement will be ancillary to the operation of aircraft in international traffic.

11. [Deleted]

12. The paragraph does not apply to a shipbuilding yard operated in one country by a shipping enterprise having its place of effective management in another country.

~~13. It may be agreed bilaterally that profits from the operation of a vessel engaged in fishing, dredging or hauling activities on the high seas be treated as income falling under this Article.~~

~~14. Investment income of shipping, inland waterways or air transport enterprises (e.g. income from stocks, bonds, shares or loans) is to be subjected to the treatment ordinarily applied to this class of income [...].~~

13. [Renumbered]

14. Investment income of shipping or air transport enterprises (e.g. income from stocks, bonds, shares or loans) is to be subjected to the treatment ordinarily applied to this class of income, except where the investment that generates the income is made as an integral part of the carrying on of the business of operating the ships or aircraft in international traffic in the Contracting State so that the investment may be considered to be directly connected with such operation. Thus, the paragraph would apply to interest income generated, for example, by the cash required in a Contracting State for the carrying on of that business or by bonds posted as security where this is required by law in order to carry on the business: in such cases, the investment is needed to allow the operation of the ships or aircraft at that location. The paragraph would not apply, however, to interest income derived in the course of the handling of cash-flow or other treasury activities for permanent establishments of the enterprise to which the income is not attributable or for associated enterprises, regardless of whether these are located within or outside that Contracting State, or for the head office (centralisation of treasury and investment activities), nor would it apply to interest income generated by the short-term investment of the profits generated by the local operation of the business where the funds invested are not required for that 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 that purpose (the nature of these permits and credits is explained in paragraph 75.1 of the Commentary on Article 7). 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 business of operating ships or aircraft in international traffic, e.g. where permits are acquired for the purpose of operating ships or aircraft or where permits acquired for that purpose are subsequently traded when it is realised that they will not be needed.

“[11.1 Some members did not fully agree with the interpretation of “profits from the operation of ships or aircraft in international traffic” in the quoted OECD Model Convention Commentary as it applies to income from inland transportation of passengers or cargo. They considered that income from such transportation is not covered by Article 8 (alternatives A and B) even when such transport is [directly] connected with the operation of ships or aircraft in international traffic”. [In order to avoid inconsistent interpretation of the term “profits from the operation of ships or aircraft in the international traffic” the Committee recommends to settle this issue by bilateral negotiations of the agreement on the avoidance of double taxation].

[Secretariat Suggestion to the Subcommittee and Committee: If this last sentence is retained, the more usual form for the Model would be something like: “In order to avoid inconsistent interpretations of the term ‘profits from the operation of ships or aircraft in the international traffic’, the issue should be addressed in bilateral negotiations”.]

[Note to the Subcommittee and Committee: the Subcommittee did not finally resolve how to address the differing approaches on the application of the term “profits from the operation of ships or aircraft in international traffic” to such inland transportation - this will need to be discussed at the 13th Session].

Paragraph 1 of Article 8 (alternative B)

12. This paragraph reproduces Article 8, paragraph 1, of the OECD Model Convention, with the deletion of the words “ships or”. Thus the paragraph does not apply to the taxation of profits from the operation of ships in international traffic but does apply to the taxation of profits from the operation of aircraft in international traffic. Hence the Commentary on paragraph 1 of Article 8 (alternative A) is relevant in so far as aircraft are concerned.

Paragraph 2 of Article 8 (alternative B)

13. This paragraph allows profits from the operation of ships in international traffic to be taxed in the source country if operations in that country are “more than casual”. It also provides an independent operative rule for the shipping business and is not qualified by Articles 5 and 7 relating to business profits governed by the permanent establishment rule. It covers both regular or frequent shipping visits and irregular or isolated visits, provided the latter were planned and not merely fortuitous. The phrase “more than casual” means a scheduled or planned visit of a ship to a particular country to pick up freight or passengers.

14. The overall net profits should, in general, be determined by the authorities of the country in which the place of effective management of the enterprise is situated (or country of residence). The final conditions of the determination might be decided in bilateral negotiations. In the course of such negotiations, it might be specified, for example, whether the net profits are to be determined before the deduction of special allowances or incentives which could not be assimilated to depreciation allowances but could be considered rather as subsidies to the enterprise. It might also be specified in the course of the bilateral negotiations that direct subsidies paid to the enterprise by a Government should be included in net profits. The method for the recognition of any losses incurred during prior years, for the purpose of the determination of net profits, might also be worked out in the negotiations. In order to implement that approach, the country of residence would furnish a certificate indicating the net shipping profits of the enterprise and the amounts of any special items, including prior-year losses, which in accordance with the decisions reached in the negotiations were to be included in, or excluded from, the determination of the net profits to be apportioned or otherwise specially treated in that determination. The allocation of profits to be taxed might

be based on some proportional factor specified in the bilateral negotiations, preferably the factor of outgoing freight receipts (determined on a uniform basis with or without the deduction of commissions). The percentage reduction in the tax computed on the basis of the allocated profits is intended to achieve a sharing of revenues that would reflect the managerial and capital inputs originating in the country of residence.

*Paragraph 2 of Article 8 (alternative A) and
paragraph 3 of Article 8 (alternative B)*

15. Each of these paragraphs reproduces Article 8, paragraph 2, of the OECD Model Convention. The paragraphs apply not only to inland waterways transport between two or more countries but also to inland waterways transport effected by an enterprise of one country between two points in another country. Countries are free to settle any specific tax problem which may occur with regard to inland waterways transport, particularly between adjacent countries, through bilateral negotiations.

16. The rules set out in paragraphs 8 to ~~10~~11.1 above relating to taxing rights and profits covered apply equally to this paragraph.

Enterprises not exclusively engaged in shipping, inland waterways transport and air transport.

17. With regard to enterprises not exclusively engaged in shipping, inland waterways transport or air transport, the Commentary on Article 8, paragraph 2, of the OECD Model Convention observes:

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 these paragraphs 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 the enterprise 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 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 [...].

Paragraph 3 of Article 8 (alternative A) and paragraph 4 of Article 8 (alternative B)

18. Each of these paragraphs, which reproduce Article 8, paragraph 3, of the OECD Model Convention, refers to the case in which the place of effective management of the enterprise concerned is aboard a ship or a boat. As noted in the Commentary on the OECD Model Convention:

22. [...] 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 4 of Article 8 (alternative A) and paragraph 5 of Article 8 (alternative B)

19. Paragraph 4 of Article 8 (alternative A) reproduces Article 8, paragraph 4, of the OECD Model Convention. Paragraph 5 of Article 8 (alternative B) also reproduces the latter paragraph, with one adjustment, namely, the replacement of the phrase "paragraph 1" by the words "paragraphs 1 and 2". As the Commentary on the OECD Model Convention observes:

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.

24. In order to clarify the taxation position of the participant in a pool, joint business or in an international operating agency and to cope with any difficulties which may arise the Contracting States may bilaterally add the following, if they find it necessary:

... but only to so much of the profits so derived as is attributable to the participant in proportion to its share in the joint operation.