

**Papers on Selected Topics in Negotiation of Tax Treaties  
for Developing Countries**

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**Preparing for Tax Treaty Negotiation**

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# Preparing for Tax Treaty Negotiation

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## 1. Introduction

Preparations are an extremely important part of the negotiation process. Without adequate preparations the team will be at a disadvantage during the negotiation and will most probably not achieve an optimal result for the country they are representing. In the following paragraphs some of the important aspects of the negotiation preparations are detailed.

## 2. Prepare your model treaty

When the decision to negotiate tax treaties has been made, the first step will be to prepare a model treaty. Before drafting a model treaty it will be necessary to agree on policy in order to decide on important issues that have to be taken care of in the treaty<sup>1</sup>. Study the United Nations Model Double Taxation Convention between Developed and Developing Countries (“UN Model Convention”), the Organisation for Economic Co-operation and Development’s Model Tax Convention on Income and on Capital (“OECD Model Convention”), regional model (if any) and models made by countries you would prefer to be compared with. When drafting your model’s provisions, it is advisable to follow the recognised wording used in international models unless you have good reasons to use alternative wording. Such good reasons can for example be found in relation to industries where the employees are working on a rotation basis. For example, activities on the continental shelf is usually based on people staying at a platform for two weeks at a time, then spending the next four weeks in their home country. In such a case the 183 days test in Article 15 of the UN and OECD Model Convention will not work properly and new wording may be necessary either by reducing the number of days or look at the days of employment rather than the days of presence.

However, different wording can create issues, such as arguments over whether the commentaries to that provision will apply. It may also create uncertainty whether a new wording is supposed just to be an improvement or introducing a new meaning. Be aware that both the UN Model Convention and the OECD Model Convention have drafted alternative optional provisions in their commentaries that can be very useful if the model articles themselves do not give a satisfactory solution.

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<sup>1</sup> See Ariane Pickering, Tax Treaty Framework and Country Model, Paper 2-N of this collection.

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When creating a model some countries will set up a study group consisting of representatives from relevant ministries and the private sector while others will hire consultants as advisers when preparing their model treaty. Such consultants can be private persons with experience in international tax matters and treaty negotiations, or agencies dealing with international tax questions.

### **3. Obtain authority to negotiate**

Familiarity with your country's constitutional and legal requirements for negotiating and giving effect to treaties is essential. The process varies from country to country. In some cases an approval from the Ministry of Foreign Affairs is required. In some cases it is the prerogative of the Ministry of Finance or Treasury. Some countries prefer to submit a priorities report to the Ministers that seeks approval for the negotiation work programme for the next year or for the next few years. This really comes down to what will work within your country's legal and political framework. An approval of the work program may then replace an individual approval. In other countries an authority to negotiate is given in response to individual requests either from other countries or from industries in your home country. Even if the government has decided that the country as a general policy should enter into tax treaties with other countries and has decided on an approved negotiation programme, it will usually in each individual case be necessary to get an authority to negotiate. Such authority will usually be given when the Ministry of Finance or Treasury has agreed on the content and policy framework of the individual treaty. Even if the relevant authority to give approval for negotiations may vary, the Ministry of Foreign Affairs should be consulted before any decision is made. It may also be advisable to consult with the ministries responsible for trade. Some countries prefer in addition to consult with the private sector to ascertain whether there are any particular problems that need to be resolved.

An authority to negotiate should be obtained before any final decision on negotiation with another country is made and is necessary whether one is considering approaching another country asking for negotiations or deciding on a request from another country.

There may be several reasons for not entering into negotiations at a specific point of time and it may be necessary to prioritise among several countries. In some cases, treaties with neighbouring countries will have first priority. In other cases treaties with countries with which important economic relations exist will be prioritised. It may also be that a request is received from a country with which there is no economic or political reason to enter into a treaty. However, in some cases it

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may also happen that there are important political or economic reasons why a tax treaty should not be negotiated. Such reasons could; for instance, be diplomatic tensions between the two countries or that the other country is a tax haven, which could be a reason not to have a tax treaty. Another reason could be that the balance of benefits between the two countries is heavily in favour of only one of them.

#### 4. Logistics

When a decision to proceed with negotiations is made, there are several issues that have to be decided.

- *How to communicate.* The initial approach requesting negotiations will usually be made through diplomatic channels or by a request made directly from the Minister in charge for negotiation of tax treaties in one country to the relevant Minister in the other country. To continue to approach each other only through diplomatic channels should be avoided. The aim should be to open a more informal dialogue between lead negotiators through email and/or phone calls so that the logistics can be more easily worked through. Most countries have an updated directory of persons that are allowed to act as competent authorities in relation to tax treaties. It is always useful to obtain such a directory from the other country, even if such directory does not tell who will be part of the forthcoming negotiation team. Such updated directory will, however, be more useful after the treaty has become effective and you for some reason need to get in direct contact with persons that are allowed to act as competent authorities. However, during the preparation period, direct contact with persons in the other country that are responsible for the preparation of the treaty at hand is preferable.
- *When will the negotiations take place?* A date for the negotiations to commence has to be agreed. Since all negotiations require preparation, time for such preparation should be allowed. A minimum of 6 weeks for preparation is desirable to enable a comprehensive study of the other country's tax system and treaty practice to be undertaken. Additional time may be required if the public is invited to provide submissions on issues that should be addressed in negotiations.
- *Where will the negotiations take place?* Since it is regarded as a disadvantage to travel, it should in principle be the country that asks for negotiations that should be prepared to do the travelling. However, this is by no means firm policy. If a country with limited economic

resources asks for the negotiations to take place in their country, a developed country may be willing to do the travelling for the first round of negotiations. If, as is usually the case, the negotiations require more than one round, it could be agreed to continue on a rotation basis.

The country hosting the negotiation should be prepared to offer suggestions to the visiting delegation about suitable hotels within easy travel of the venue as well as other information that is relevant.

The advantages of having the negotiations “at home” lie in having easy access to reference materials, the possibility to consult with other officers in the department or even having access to the relevant policy makers. By having negotiations at home you will also avoid travel costs, jet lag and other inconveniences of travel. It is also customary that the host country tables its model and asks for negotiations to proceed on the basis of that model, a request that is usually accepted. It is always an advantage to have one’s own model as a working document. On the other hand it will be difficult to escape from your other duties such as treaty interpretation issues or other urgent matters which you are required to deal with on a daily basis.

- *In which language will the negotiations be performed?* If both countries speak the same language, there is of course no problem. However, if the two countries speak different languages, it will be necessary to agree on the language to be used during the meeting. Since the English language is the language most commonly used, it is advisable that the negotiating team members have good knowledge of English. If the team members of the two countries are unable to carry out the negotiations in the same language, it will be necessary to have an interpreter present during the meeting. This should be agreed upon in advance. In some cases both countries would prefer to have their own interpreter in order to facilitate discussions within each team. However, there will in many cases be difficulties in finding interpreters with adequate knowledge in treaty language. Such lack of knowledge may create difficulties and unnecessary misunderstanding during the discussions. It is advisable that the interpreters have learned and understand terms used in tax treaties prior to the meeting. This can be done by insisting that they study terms used in other treaties you have entered into or used in internationally recognised models such as the UN or OECD Model Conventions.

The two teams will also have to agree upon which language the two draft treaties should be prepared.

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- *How many members should the negotiating team consist of?* In most cases there should be at least three members; one to lead the negotiations, one to provide advice to the leader, and one to take comprehensive notes. One team member needs to be made responsible for maintaining the agreed text. This matter is made easier if the text can be electronically displayed on a screen. If that is not possible, accurate paper drafts need to be kept. In countries where the tax administration is separate from the policy department, it is advisable to include members from both areas. The number may vary depending on where the meeting is to take place, but should not exceed six people (including any interpreter). If the negotiations are taking place at home, it could be beneficial to have more people present in the room in order for them to gain experience. However, these additional people would be present merely as observers, and would generally not participate in the negotiations.
  - *Who should be members of the team?* The team should, if possible, consist of people with experience and knowledge of tax treaties, international tax issues and domestic tax legislation. In some cases an official from the Ministry of Foreign Affairs will also be a member of the team. The reason for this is that entering into treaties with other countries is often the responsibility of the Ministry of Foreign Affairs, and they can give advice on important questions such as the definition of the country, the entry into force and the termination provisions of the treaty as well as advice on constitutional issues. If acting as competent authority for the treaty lies with a different authority from that which is responsible for negotiations, or if administration or interpretation of treaties is the responsibility of another authority, it is advisable that members from that authority are included.

Some countries prefer to have persons from the private sector present during the negotiations. This is a very sensitive question since the negotiations are between states and the agreement in most cases will be confidential until signed. The same applies to hired consultants. Whether such persons should be present during negotiation should be a matter that is discussed and agreed with the other country in advance of the negotiations.

- *Other preparations.* The country where the negotiations are taking place has to find suitable meeting rooms. If at all possible, the room should be set up with a projector to display the draft treaty text as it is negotiated on a screen that is visible to both teams. Arrangements should be made for the provision of suitable refreshments, such as water, tea and coffee and light snacks for morning and afternoon breaks. Printing facilities are also very helpful. As

many delegations like to bring their own laptop computers to the negotiations, adequate power outlets are preferable. The same applies to Internet connectivity, if available.

If the meeting room is in a secured building, the necessary security passes or escorts to the meeting room should be arranged in advance for members of both teams. For this reason, and as a matter of courtesy, each team should advise the other of the number of people in their team, their names, role and contact details, and who is the leader of the team. It is also advisable to make the gender of each team member clear (e.g. by giving them a gender-specific title such as Mr or Ms), since this may not be readily apparent to the other team from the name alone.

The team that has to do the travelling has to remember to apply for travel permission and, if necessary, visas. This should be done early to avoid unnecessary delays. For a team to wait until the last minute before having final confirmation of the arrival of a treaty partner may create a bad impression and may not be conducive to the negotiation.

Some countries like to provide gifts to the other delegation, either to each member of the delegation or just to the delegation leader. Other countries have public sector policies against accepting gifts. One should therefore be careful with gifts and they should always be of small value. Always be aware that gifts are subject to airport inspections, and some countries impose restrictions on the import on some products. It is also advisable to avoid bulky or heavy gifts.

## **5. Define roles of each member of the team**

In the preparations for the negotiations, as well as during the negotiations, it is important that all members of the team know which duties they are allocated.

There is much work to be done during the preparations and it is important that each member of the team, as early as possible, knows what will be his/her responsibility in the preparations

The leader of the team should be a senior official with the authority to make important decisions during the negotiations. Such decisions include accepting or rejecting the other team's proposals, making his or her country's own proposals, and finding and accepting compromises, even if they are ultimately subject to approval by senior authorities. A senior official should always lead the team;



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otherwise the other country may get the impression that the negotiation is regarded as of little or no importance. This may create misunderstanding and a negative atmosphere.

It is preferable that the leader has comprehensive knowledge of domestic tax legislation and the interaction of domestic legislation and tax treaties. If not, at least one of the other members of the team should have such knowledge. Experience in tax treaty negotiations is also highly desirable.

It is the leader who should lead the discussion and present the team's arguments. However, the leader may decide to ask one of the other members of the team to present an argument, explain a position or a special feature in domestic legislation. In such a case this should, if possible, be agreed on within the team beforehand. In some countries the team is sometimes led by the most senior official of the negotiating authority who may not necessarily have the specific expertise required. This can create problems during the negotiations and it may be advisable for that person to indicate that the majority of the discussion will be led by a team member who has the relevant expertise.

It is important that at least one of the members of the team has the responsibility for taking notes of the discussions and any agreements reached during the meeting. Notes are important if a second round of negotiations is needed, and when preparing the treaty for signature and subsequent ratification. It is also important to have such notes when the competent authority at a later stage may need to interpret issues arising from the treaty. The responsibility for taking notes should not be given to a junior without experience because such a person will often have difficulties in understanding and deciding on what is important and what is of less significance. It is unusual to record the discussions, and it should never be done without agreement in advance with the other team in advance.

It is advisable to take note of the reaction of the members of the other team during discussions to see how they react to arguments put forward in the discussion and also when proposals are put on the table. Body language, as well as verbal responses, can give valuable insights into how the members of the other team view a proposal. Their response may give an indication of the relative importance to them of the issue, which may facilitate finding acceptable compromises.

## **6. Consult with business and relevant ministries and agencies**

When preparing for negotiations with another country it is wise to consult with business and relevant ministries and agencies. In most cases there will be business in one or both countries that has

initiated the decision to proceed with the negotiation of a tax treaty. This may be due to problems they have met or are anticipating when engaged in cross-border activities. Such problems will usually arise from domestic legislation in one or both of the countries preventing or hampering the desired economic activity or creating a barrier to the desired cooperation between industries in the two countries. It may also be that one of the countries has entered into a tax treaty with a third country giving business in that other country a competitive advantage.

Consultation with business will in most cases provide the team with important information of economic areas which it will be important to address during the negotiations. Such consultations could be done by approaching business associations and asking them to consult with their members to establish if there are particular points of importance to be aware of during the negotiations. Depending on their remarks, a meeting could be arranged.

Relevant ministries and agencies may also have information of importance for the negotiations. For example, they may have information on areas where they would like to encourage or make investments or areas where they would like to attract investments. It may also be advisable to consult with your embassy in the other country. They may have important information in economic as well as non-economic areas that can be of value in the preparations.

## **7. Prepare the draft model used for a particular negotiation**

Many countries will always use their general model treaty without making any changes. Although this indicates what they will regard as their preferred treaty, it should always be open for negotiations. Other countries will take into consideration particular inputs they have received from different sources, such as previous negotiations or public submissions. Some developed countries may even have prepared a specific draft for negotiations with developing countries, allowing more taxation rights for the source state.

Whether a country uses a general model treaty or a draft specially prepared for the negotiation at hand, the team must have a clear understanding of all the articles in the draft model they have prepared for the negotiation. It is important to understand all the articles and how they interact. The model may have been changed in some areas subsequent to previous negotiation and the team should be aware of where and why such changes have been made, and the effects of these changes.

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The team should have a clear understanding of why the articles have been drafted the way they are and be able to explain them. The articles may be derived from the UN Model Convention, the OECD Model Convention, a regional model, or be specifically drafted by the ministry. They may also be found as alternatives in the commentaries to the models mentioned above. However, it is vital that the team is aware of and can explain any provisions that do not follow the UN Model Convention or OECD Model Convention. Such deviations may be due to domestic legislation or to important economic areas that need special attention.

## **8. Prepare alternative provisions**

Many countries have provisions in their models, which they know from experience the other country may find difficult to accept in negotiations. To facilitate negotiations it is advisable to draft alternative provisions, which, through experience, are perhaps more likely to be accepted by the other country. These may be provisions that have been accepted in negotiations with third countries, or provisions that the other country has previously accepted in treaties with other countries. They could also be unique provisions intended to specifically address concerns expressed by the other country. When realising that a preferred provision is not acceptable, such drafted alternative provisions can be presented and explained. It will be easier to have alternative provisions accepted when they can be presented in writing rather than orally.

## **9. Non-negotiable provisions**

Some countries have non-negotiable provisions in their model. This position can be due to certain business activities or industries such as mining or extraction of natural resources. It may also be related to economic incentive legislation or other areas of great importance to that country. It may also relate to policy issues such as exchange of information. Most countries have difficulty in accepting that exchange of information may be prevented by bank secrecy legislation.

Non-negotiable positions may be found in the Commentaries to the OECD Model Convention. OECD member countries that disagree with the text of the Model lodge Reservations to the Model expressing their view, while disagreements with the interpretations found in the Commentaries are reflected as Observations. A number of non-OECD member countries have also set out their positions on the Model and Commentaries. Although these Reservations, Observations and

Positions do not always indicate a non-negotiable position, they are a very valuable indicator of strongly held positions.

It is important to distinguish between provisions that are really non-negotiable and provisions for which the other country has a strong preference, but which, under certain circumstances can be flexible. Provisions that are only a strong preference should not be presented as completely non-negotiable.

Some countries prefer to list their non-negotiable provisions and present them to the other country during the preparations either in writing or in a pre-meeting. Presenting such provisions in a pre-meeting will give the team the possibility of explaining the reason for its standpoint. By presenting the non-negotiable provisions during the preparations one may avoid unnecessary discussions or entering into negotiations that are doomed to fail.

Other countries are of the opinion that such pre-presentation of non-negotiable provisions may deter the other country from entering into what might otherwise be a successful negotiation. By looking at what is achieved on balance in relation to all the other provisions of the treaty during the negotiation, and by explaining why some provisions are of such importance that a superior authority or the parliament will not accept any deviation, these countries hope, based on earlier experience, that their standpoint would be accepted.

## **10. Interaction between domestic legislation and treaty provisions**

It is important to have a clear understanding of the interaction between domestic legislation and treaty provisions. During negotiation a team may be asked how the domestic legislation interacts with the provisions proposed in the draft model. One reason for such knowledge is to understand to what extent the proposal deviates from the domestic legislation and to understand what kind of benefits are offered. One simple example is the withholding taxes on dividends, interest and royalties. If what is being proposed is strictly in line with the domestic legislation, there are no treaty benefits and the treaty partner will be less interested in having a tax treaty with you.

For the same reason it is advisable for a team to study the interaction between the provisions of the domestic legislation of the other country to have a clear understanding of the benefits offered in its proposed draft treaty.

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## **11. Send a short explanation of your domestic tax system and your model to your treaty partner**

Many countries prepare a brief summary of their domestic tax system with a special focus on areas relating to the treaty and including an explanation on any area which may require special attention. A short explanation of the main points in your legislation will make it easier to understand why some articles need special drafting and will also identify issues that need to be considered.

To facilitate the negotiations this summary of the domestic legislation and a draft model should be sent to the treaty partner well in advance of the meeting. At the same time one may ask for a similar summary and a draft model from their side.

If such explanations and models are received in good time before the meeting the two teams will have sufficient time to prepare and time will be saved during the negotiations.

If no summary is received from the other country, it is advisable to look for such information in other places. Such information may be obtained from the web site of the other country, in outlines prepared by the major international accounting firms or by searching on the Internet. It could also be a good idea to subscribe to tax treaty services. Some firms provide treaty services where they publish the text of all treaties entered into between different countries. In addition to provide the text of all treaties, they also provide information about the entry into force and the termination of treaties, additional protocols, new legislation, court decisions and mutual agreements entered into by competent authorities (if made public). All very valuable information.

## **12. Prepare a comparison of the respective models – identify issues**

After having received the draft model from a treaty partner it is important to prepare a comparison between the two drafts. This may be done in several ways, see examples in enclosed Annex 1 and Annex 2. In Annex 2 two colours are used. The use of colours simplifies the identification of the differences.

All differences between the two drafts should be identified because the small and less important textual differences have to be agreed upon during the negotiation as well as the major items. If some differences are overlooked, difficulties will arise at the time of signature, or even worse, after the

treaty has entered into force. In the last case a protocol to the treaty has to be prepared and the laborious work of bringing the protocol into force has to be done.

During the comparison and identification of the differences it is advisable to decide what differences are important and what differences are of less importance. It will facilitate negotiation to concentrate more on the important issues. It will be these important issues where difficulties will be met during the negotiation. Having identified the important issues, such issues should be discussed internally to find arguments to be used, and what tactic should be followed, in the process of trying to convince the treaty partner to accept your proposal. By identifying the important issues early in the comparison process there will also be time enough to draft compromises and also to consult with a superior authority for acceptance of different anticipated solutions. If a compromise solution could be acceptable, a prepared draft may be easier for the other team to consider and accept than a compromise proposed orally at the meeting. A briefing note where the origin of the draft is set out e.g. internationally recognised models, examples found in your own or the other country's tax treaties or drafted by you specifically for this negotiation should be included with the prepared draft. This will ensure that all members of the team are aware of and can explain its origin.

### **13. Identify provisions proposed in the two draft models that deviate from provisions agreed in treaties with third countries**

When preparing for negotiations a team should be aware of treaties their country has entered into with third countries, since they have to be prepared for the fact that the other country has studied such treaties. If the other team finds provisions in those treaties that are either identical to their own proposals, or are regarded as more favourable than the proposal put forward in the draft they have received from you, they will most likely ask for the same treatment. To avoid unexpected surprises during the negotiations, it is advisable to be prepared either to accept the same solution or be prepared to explain why such solution was acceptable when negotiating with the third country, but not now. There may be many reasons for different solutions with different countries, including a change of policy or a compromise accepted to achieve favourable treatment in other areas of greater importance.

For the same reason as a knowledge of your own treaties already entered into is important, it is important for a team to study the treaties the other country has already entered into with countries

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which are comparable (economically or regionally) to your own. If the treaties used as a comparison are not too old, these will give an indication of their current policy and what the other team may be willing to accept. They may also indicate how strongly the other team is likely to argue for their own position. For example, if the other country has never agreed to a provision allowing withholding tax on fees for technical services, or has never agreed to tax sparing provisions, it is unlikely that it will agree to include such provisions in negotiations with your country. Conversely, if a provision is always included in the other country's treaties, e.g. certain anti-avoidance provisions, you can expect that they will insist on a similar provision being included in any treaty with your country.

If the negotiation at hand is with a developed country, a comparison with treaties that country has entered into with other developing countries will be of more value than a treaty entered into with another developed country.

Treaties entered into many years past are also of less value than new treaties. Recent treaties entered into by the other country may also help the team to develop drafting that is likely to be acceptable to that other country.

During this preparation process it is important to have in mind that you have to look at the overall balance of the treaty and not at specific issues.

## **14. Study culture and habits in the other country**

When preparing the draft model or when studying the draft received, it is advisable to have some background knowledge about the country you are going to negotiate with. It may be in relation to their economic situation, their GNP, important industries or their relations with other countries.

If the negotiation is with a country with which you are not familiar, it is advisable to check whether there are issues you should be aware of and take into consideration. It could be related to food, alcohol, religious beliefs or what is regarded as bad behaviour. The timing of the negotiations is one example. Do not propose negotiations during important religious holidays in the other country. Awareness of the dress code when visiting the other country is another example. This may relate to the way women dress, but also to men. Never dress too informally unless there is a special reason for doing so.

It may harm an otherwise good atmosphere between the two teams if it is considered that there has been bad behaviour or someone feels offended due to the lack of knowledge of local customs. A consultation with your embassy in the other country may prevent such incidents. In general, it is advisable to have enough information not to seem ignorant or uninterested.

## **15. Conclusions**

As you will see from this paper, preparations are essential. It may be the most important part of the whole negotiation process. If you do not come to the discussions fully prepared, what you may achieve is a treaty that is not as beneficial to your country as it might otherwise have been. It is easy to miss possibilities. It is advisable not to rush into negotiations, but take the necessary time to come prepared.



## Annex 1 Examples on the comparison of draft treaties

### Article 15 Dependent Personal Services (B's article 14 Income from Employment)

Nr	Country A	Country B	B's treaties with country C and D	Comments
1.	Reference to art 16 (Directors' fees) and art 19 (Government Service)	B has reference to the same articles, but numbered art 15 and 18. In addition a reference to art 17 (Pensions and Annuities)	B has a reference to the article on pensions in treaties with C and D	
2.	<p>a) "period of twelve months"</p> <p>b) "...an employer who is a resident of the State of which the recipient is a resident,..."</p> <p>b) hiring out of labour</p> <p>c) reference to "fixed base"</p>	<p>"twelve-month period"</p> <p>b) "...an employer who is not a resident of the other State..."</p> <p>-----</p>	<p>B's proposals are contained in treaties with C and D</p> <p>No such provision</p>	
3.	international traffic - "...employment exercised aboard a ship or aircraft may be taxed in that State."	international traffic - "...may be taxed in the Contracting State in which the place of effective management is situated.	Taxation in the state where the shipping company is a resident in both the treaties with C and D	

## Annex 2 Examples on the comparison of draft treaties

Red: Proposal from State A

Blue: Proposal from State B

### Article 13

#### Capital Gains

1. Gains derived by a resident of a Contracting State from the alienation of immovable property referred to in Article 6 and situated in the other Contracting State may be taxed in that other State.
2. Gains from the alienation of movable property forming part of the business property of a permanent establishment which an enterprise of a Contracting State has in the other Contracting State **or of movable property pertaining to a fixed base available to a resident of a Contracting State in the other Contracting State for the purpose of performing independent personal services**, including such gains from the alienation of such a permanent establishment (alone or with the whole enterprise) **or of such fixed base**, may be taxed in that other State.
3. Gains **derived by an enterprise of a Contracting State** from the alienation of ships or aircraft operated in international traffic, or movable property pertaining to the operation of such ships or aircraft shall be taxable only in **that the Contracting State in which the place of effective management of the enterprise is situated**.
4. Gains derived by an enterprise of a Contracting State from the alienation of containers (including trailers and related equipment for the transport of containers) used for the transport of goods or merchandise shall be taxable only in that State, except insofar as those containers or trailers and related equipment are used for transport solely between places within the other Contracting State.
5. Gains from the alienation of any property, other than that referred to in the preceding paragraphs, shall be taxable only in the Contracting State of which the alienator is a resident.

### Article 14

#### Income from employment

1. Subject to the provisions of Articles 15, 17 and 18, salaries, wages and other similar remuneration derived by a resident of a Contracting State in respect of an employment shall be taxable only in that State unless the employment is exercised in the other Contracting State. If the employment is so exercised, such remuneration as is derived therefrom may be taxed in that other State.

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2. Notwithstanding the provisions of paragraph 1, remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State shall be taxable only in the first-mentioned State if:

- a) the recipient is present in the other State for a period or periods not exceeding in the aggregate 183 days in any twelve months period commencing or ending in the fiscal year concerned, and
- b) the remuneration is paid by, or on behalf of, an employer who is a resident of the first-mentioned State not a resident of the other State, and
- c) the remuneration is not borne by a permanent establishment which the employer has in that other State.

3. Paragraph 2 of this Article shall not apply to remuneration derived by a resident of a Contracting State in respect of an employment exercised in the other Contracting State and paid by, or on behalf of, an employer who is a resident of the first-mentioned State if:

- a) the recipient renders services in the course of that employment to a person other than the employer who is a resident of that other State or has a permanent establishment in that other State, and who directly or indirectly, supervises, directs or controls the manner in which those services are performed; and
- b) the employer is not responsible for carrying out the purposes for which the services are performed.

4. Notwithstanding the preceding provisions of this Article, remuneration derived in respect of an employment exercised aboard a ship or aircraft operated in international traffic by an enterprise of a Contracting State may be taxed in that the Contracting State in which the place of effective management of the enterprise is situated.

5. Where a resident of a Contracting State derives remuneration in respect of an employment exercised aboard an aircraft operated in international traffic, such remuneration