

International Chamber of Shipping

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URGENT

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HE Mr Kilo Koterec
President of the Economic and Social Council
United Nations, New York

CC: Mr Alexander Trepelkov,
Director, Financing for Development Office
UNDESA, New York

Excellency,

MODEL UN CONVENTION ON DOUBLE TAXATION

The International Chamber of Shipping (ICS) is the principal international trade association for shipowners, with consultative status at the various UN agencies that impact on global shipping.

ICS will be represented at the **Eighth Session of the Committee of Experts on International Cooperation in Tax Matters, 15–19 October 2012, in Geneva.**

ICS has prepared the **attached** comments in relation to Article 8 of the UN Model Convention.

We would be very grateful if you could kindly ensure that our comments are circulated to participants at the meeting in Geneva next week, and the members of ECOSOC as appropriate.

Thank you for your kind consideration.

Yours sincerely

Simon Bennett
Director External Relations

**EIGHTH SESSION OF THE COMMITTEE OF EXPERTS ON INTERNATIONAL
COOPERATION IN TAX MATTERS, 15–19 OCTOBER 2012, GENEVA**

**The United Nations Model Double Taxation Convention between Developed and
Developing Countries**

Comments by the International Chamber of Shipping (ICS)

1. The International Chamber of Shipping (ICS) is the principal international trade association for ship operators. ICS membership comprises national shipowners' associations from 36 nations including OECD and non-OECD countries. ICS represents all sectors and trades and over 80% of the world's merchant shipping tonnage within the various United Nations agencies that impact on the industry.

2. ICS respectfully submits the following comments on the 'Shipping Article' (Article 8) of the UN Model Treaty.

International Shipping

3. The carriage of goods and raw materials between different countries by sea is an inherently international business requiring a uniform, global regulatory framework. This is to ensure that international maritime transport can operate efficiently, without the possibility of varying national rules at different parts of a voyage, which would result in chaos and serious market distortion.

4. About 90% of world trade is carried by sea and an efficient system of international maritime transport, free from unnecessary administrative complication, is vital to the smooth running of the global economy.

5. The necessity of global rules for a global shipping industry is therefore well established. It is enshrined in the various regulations and codes produced by the United Nations and its agencies which impact on international shipping. This includes the United Nations Convention on the Law of the Sea (UNCLOS) and the various international Conventions adopted by the United Nations International Maritime Organization (IMO).

Article 8

6. The same principle applies to the taxation of international shipping which has been well served by the UN Model Tax Treaty, including Article 8. This, of course, establishes the principle of 'home State' taxation of profits from the operation of ships engaged in international maritime traffic. This principle has been established in earlier UN model tax treaties and similar models agreed by the OECD, as well as by the UN's predecessor, the League of Nations. The principle has also been included in numerous bilateral shipping treaties, many of which predate even the first League of Nations Model Tax Treaty.

7. The shipping industry today comprises various ship types trading internationally, such as containerships, oil tankers and bulk carriers transporting, for example, iron ore and coal. The common feature of all these sectors is that the vessels all trade between ports in different countries. In many trades, ships do not follow scheduled routes and will be literally unaware of which countries they will be likely to visit during the course of a voyage.

8. As a result of the cross-border features of these activities, there are various and long established bilateral tax treaties between nations around the world governing the allocation of taxation rights which enshrine the principle of 'home State' taxation with respect to international maritime transport.

9. The rationale for this clear demarcation of taxation rights is that an allocation of profits to all of the various countries at whose ports a ship may call would simply be too complex to administer. In today's world of advanced computing capabilities, the issue is not so much the complexity of the calculations, but rather the multitude of widely divergent and irreconcilable tax systems through which ships may routinely pass. (Individual ships may call at perhaps 20 or 30 different nations during a year, and ships operated by a single company may call at as many as 100 different nations a year, or even 150 nations over a longer period.)

10. ICS believes that it is currently inconceivable that up to 150 different countries would be able to agree on the method of computation and allocation of taxes on the profits from the operation of ships by a company.

11. The situation is further complicated by the fact that, consistent with applicable competition law, there is a large degree of co-operation between different shipping companies in the form of vessel sharing agreements, pooling arrangements, slot sharing, alliances and other agreements.

12. In summary, the maintenance of the principle enshrined in Article 8 concerning 'home State' taxation of companies involved in international maritime transport is most important to ensure the efficiency of world trade, but also for sound reasons of practicality.

13. It should be noted that, unlike the OECD Model, Article 8 of the UN Model Treaty already takes into account the interests of both developed and developing countries by allowing an alternative provision for the source country to tax more than casual shipping activities (such as assessing a "freight tax") should the two contracting States find this to be appropriate. It therefore seems unnecessary to introduce language to further restrict the scope of Article 8 in comparison to the OECD Model.

14. The international shipping industry would therefore be very concerned by any suggestion that the scope of the UN Model Article 8 should be more restrictive than the OECD Model. This would give rise to the very complexities which Article 8 currently

seeks to avoid and would even add further complexities. Indeed, as a consequence of the complicated patchwork of taxation arrangements that might emerge, many smaller shipping companies might decide not to call in certain countries' ports, reducing the choice of available shipping services, especially in non-OECD nations located outside the major trade routes.

Treatment of Domestic Leg of International Voyages

15. ICS accepts that "cabotage" or voyages with origin and destination ports in the same country are not within the scope of Article 8. However, ICS believes that it is most important that this restriction should not be extended to cover the domestic leg of an international transport voyage, whether this is conducted by coastal transport or by inland waterway (i.e. where an international movement of cargo has a domestic leg in the country of origin or destination). ICS firmly believes that the deciding factor should be the ultimate destination of the cargo, irrespective of whether any intermediate connection is made at either a domestic or a foreign location.

16. Domestic legs occur where goods are transported to a foreign destination via a domestic intermediate port, hub or transshipment port. This domestic leg can be achieved either via a local shipping operator (e.g. a feeder vessel) or via the international shipping company's own vessel.

17. In the case where a local feeder operator is paid to transport cargo in the domestic leg, the profits from the operation of the local feeder vessel are subject to domestic taxation.

18. It should be noted that international shipping companies do not issue separate freight invoices for a domestic leg and an international leg of an international voyage. The customer buys, and is invoiced for, a through transport from a domestic port in one country to a foreign port in another. It is up to the international shipping enterprise to carry out the transportation service in the most efficient and cost effective way in order to maximise its revenue. This may involve feeder or own vessel transport to domestic or foreign intermediate ports, hubs or transshipment ports. However, this does not alter the fact that the service being provided by the international shipping enterprise is still international maritime transportation.

19. The same considerations can be applied to inland transportation. Indeed, the 2005 Commentary to the OECD Model is more restrictive. In order for the shipping company to be taxed only in its 'home State' on the inland leg in the State of origin of the international movement of cargo, it is a condition that the inland transport in the State of origin is carried out by a local company, such as a railway or trucking company. The local company will then be subject to local taxation in the State of origin.

20. For other auxiliary services, which are closely linked to the provision of international maritime transport, the intention of the OECD Model is to avoid the necessity for complex allocations of income and costs to the ancillary services. These auxiliary

services exist only on the basis of the facilities and staff which are required to run the maritime transport activities and must be minor in comparison to the primary shipping activity.

21. If, in addition to opening up the possibility for a source State freight tax on shipping profits, the UN Model Treaty were also to permit domestic legs or auxiliary activities to be taxed in the source State under Article 8, ICS believes that the door would be open to a multitude of complexities and disputes regarding the allocation of income and costs.

22. ICS also notes, with reference to international legs, that there has been some concern about the use of third party vessels in the absence of code sharing, slot chartering, vessel agreements or the like. Such use is infrequent and expensive to the shipping company and is undertaken only where it is mandated by customer demands under a container carriage agreement and should certainly also be covered by Article 8.

23. In light of the above, ICS respectfully requests that the Committee of Experts considers very carefully the onerous administrative burdens, and the negative impact on world trade which would ensue, if the United Nations were to adopt a different approach to the OECD in defining the scope of Article 8 of the Model Tax Treaty.

24. ICS hopes that these comments are helpful to the Committee of Experts.