

Article 8 of the UN Model – Transportation: Issues for the Committee

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2011 Annual Session Report

- 37. Several members expressed concern over the comprehensive changes proposed in the commentary on article 8. **It was argued that the changes would widen the scope of the article and therefore needed to be discussed in detail** in order to assess their implications.
- 38. Consequently, the **OECD commentary paragraphs added in 2005**, which referred to the income from directly connected and ancillary activities of shipping and air transport enterprises, **were removed.** ...

2011 Annual Session Report

- ... It was decided to include in the catalogue of issues for future discussion **the term "auxiliary"** in the context of the auxiliary activities that would come within the operation of the article.

Why this Note

- **Purpose:** to address the issues involved in elaborating the concept of “auxiliary” activities, including as proposed in the document prepared for the seventh session of the Committee.
- **Paper** (as adjusted following discussion, if necessary) **and 2012 annual session report** will assist the Committee to take the matter forward.

Current (2011) Commentary

- 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. ...

Current Commentary

- ... 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:

Current Commentary

- 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.

Commentary Issues

- Current Commentary uses the term “auxiliary activities” **a term superseded in OECD by “ancillary activities”**.
- is the OECD usage a more effective means of **distinguishing these activities from the “preparatory or auxiliary” activities** addressed in article 5 (4)?

OECD Wording since 2005

- “[a]ctivities 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 ...**

OECD Wording since 2005

- ... **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.”

Differences

- UN Commentary says examples **"could properly be brought under the provision"**.
- OECD Commentary appears clearer on coverage.

Examples

- **Bus services**
 - UN Model refers to **town to airport bus services**.
 - OECD Model limits to bus services **operated primarily to provide access to and from the airport for its international passengers**.

Examples

- **Some of passengers/ Cargo carried by other carriers**
 - **Not listed in UN Model** (though it is a non exhaustive list).
 - Code sharing and slot-chartering coverage unlikely to be controversial in policy
 - “Earlier sailings” – policy unlikely to be controversial – whatever the view on the best wording.

Examples

- **Inland Transport legs of Int'l Transport**
 - Dealt with more comprehensively under OECD wording.
 - UN Model uses separate examples (trucks, buses) and does not distinguish profits of various enterprises involved.
 - Addresses issue more broadly in para. 9 of Commentary – but only in relation to goods transport.

Examples

- **Ticket Selling**

- OECD elaborates more closely on which cases are sufficiently related – a useful clarification?

- **Advertising**

- **OECD example covers magazines.**
- On-board advertising is becoming more prolific and diverse in kind.
- Should there be more elaboration or are any such profits unlikely to be the subject of source State taxation anyway?
- In any case, **reference to “propaganda” outdated.**

Examples

- **Containers**

- OECD deletes reference to **containerisation as a “recent phenomenon”** – clearly out of date.
- United Nations Model does not include container fees in the para. 8 indicative list of auxiliary activities), though not being mentioned is not itself conclusive.

Examples

- **Containers**

- The **OECD Model** takes the view that “(p)rofits derived by an enterprise engaged in international transport from **the lease of containers are usually either directly connected or ancillary** to its operation of ships or aircraft in international traffic and in such cases fall within the scope of the paragraph”.
- A stronger presumption of inclusion than what currently exists in the UN Model?

Examples

- **Containers**

- The OECD Model adds a clarification:
- “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”.

Examples

- **Providing goods or services to other enterprises**
 - OECD example on “pooling services” – a useful addition?
- **Single use Transit Hotels**
 - Hotels for “no other purpose” than transit passengers – included in the ticket price.
 - Deleted in OECD Model – a worthwhile and practical exception?
 - Do they exist? If so clarification may be appropriate.
- **Investment income**
 - UN Model does not give exceptions when investment income is so integral to operations as to be directly connected – and thus covered by Article 8.