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Unitary Taxation and International Tax Rules

Reuven S. Avi-Yonah¹
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Any proposal to adopt Unitary Taxation (UT) of multinationals has to contend with whether such taxation is compatible with existing international tax rules and in particular with the bilateral tax treaty network. Indeed, some researchers have argued that the separate accounting (SA) method and the arm's length standard are so embodied in the treaties that they form part of customary international law and are binding even in the absence of a treaty. In this paper we will argue that UT can be compatible with most of the existing tax treaties, and that developing countries in particular can implement it in most cases with or without a tax treaty.

1. UT and the Existing Treaty Network.

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Transfer pricing is currently governed by Article 9 of the treaties, which assumes the SA method because it addresses the commercial or financial relations between associated enterprises.³ If UT were adopted, Article 9 would become irrelevant in those situations to which UT applies (i.e., where a unitary business is found to exist) because UT ignores the transactions between related parties, and treats them instead as part of a single enterprise.

Instead, UT would be governed by Article 7. Under Article 5(7), “[t]he fact that a company that is a resident of a Contracting State controls or is controlled by a company that is a resident of the other Contracting State ... shall not of itself constitute either company a permanent establishment of the other.” However, it is well established that a dependent agent can be a permanent establishment (see Art. 5(5)), and whether an agent is dependent is based on whether the principal exercises legal and economic control over the agent.⁴ “An

³ The quoted articles are identical in all the tax treaty models except when discussed in the text.

⁴ See, e.g., *Roche Vitamins Europe Ltd v. Administracion General del Estado*, Case No. STS/202/2012 (Spanish Supreme Court Jan. 12, 2012) (Swiss principal had PE in Spain through an affiliated Spanish company; activity of

agent that is subject to detailed instructions regarding the conduct of its operations or comprehensive control by the enterprise is not legally independent.”⁵

In the case of a modern, integrated MNE that operates as a unitary business, a strong argument can be made in most cases that the parent of the MNE exercises both legal and economic control over the operations of the subsidiaries, especially where the subsidiaries bear no real risk of loss and acquire goods and services exclusively or near exclusively from the parent or other related corporations. The existence of Intranets in most MNEs has resulted in most important operational decisions being centralized. In that case, the subsidiaries should be regarded as dependent agents of the parent. Such a finding

the subsidiary was directed organized and managed in a detailed manner by the principal); Salad Dressing, Fiscal Court Baden-Wurttemberg, 3 K 54/93, Internationales Steuerrecht 1997 (Swiss principal had a PE at the premises of an unrelated German contract manufacturer based on detailed instruction by principal); Milcal Media Limited, Court of Appeal, Stockholm, Case nos. 7453-54-02 (2005) (Cyprus principal had a PE through Swedish subsidiary because it was subject to detailed instructions and control); eFunds Corp. v. ADIT, Income Tax Appellate Tribunal, Delhi, 2010; Lucent Technologies v. DCIT, Income Tax Appellate Tribunal, 2008 (US parent company had a service PE in India); and the cases cited by LeGall, *infra*.

⁵ U.S. Treasury. Technical Explanation of United States Model Income Tax Convention. Washington: Government Printing Office, Art. 5(6) (2006).

is in fact made with increasing frequency in both developed and developing countries.⁶

If the subsidiary is an agent of the parent, Art. 7(2) of the treaties requires the attribution of the same profits to the subsidiary “that it might be expected to make if it were a distinct and independent enterprise engaged in the same or similar activities under the same or similar conditions.” Arguably, the application of UT satisfies this arm’s length condition because in the absence of precise comparables (which almost never exist) it is not possible to determine exactly what profits would have been attributable to the subsidiary under SA.

When the US adopted CPM and profit split in the 1994 transfer pricing regulations, some countries objected that it was violating the treaties because these methods did not rely on exact comparables to

⁶ Le Gall JP. (2007) The David R. Tillinghast Lecture Can a Subsidiary Be a Permanent Establishment of its Foreign Parent? Commentary on Article 5, par. 7 of the OECD Model Tax Convention. *Tax Law Review* 60: 179-214.

find the arm's length price. However, these objections soon subsided, and even the OECD endorsed similar methods in its transfer pricing guidelines. The US has always maintained that both CPM and profit split satisfy the arm's length standard despite the lack of precise comparables (and in the case of profit split, using no comparables at all to allocate any residual profits). Similarly, the US has maintained that the "super-royalty rule" of IRC sec. 482 (which requires royalties to be "commensurate with the income" from an intangible, and therefore subject to periodic adjustment) is consistent with the arm's length standard, even though no comparables can be found to show that such adjustments are ever made by unrelated parties.

Before the recent changes to the OECD MC, it was therefore quite plausible to argue that UT was compatible with the treaties if the subsidiary were as a factual matter legally or economically dependent on the parent so as to constitute a PE. In addition, a country that wished to adopt UT could rely on the language of the OECD MC Art.

7(4):

“Insofar as it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be necessary; the method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this Article.”

Since it can be argued that in the absence of comparables the result reached under UT is equivalent to what could be reached under SA, this language seems to permit the use of UT for dependent agent PEs.

However, the OECD in 2010 adopted changes to article 7 that may make this argument more difficult to sustain. Specifically, the OECD has adopted the “authorized OECD approach” to the attribution of profits to PE that treats them as the equivalent to subsidiaries, and has

suggested that the transfer pricing guidelines that explicitly reject UT should be applied to PEs. In addition, the OECD has followed the US lead and deleted article 7(4) from its MC. However, the UN model still includes article 7(4).

Nevertheless, the vast majority of existing actual treaties have not been revised to incorporate those changes. In particular, Appendix A shows that many developing country treaties contain article 7(4), even when the treaties are with OECD members. The Appendix lists 174 such treaties by developing countries that contain this language, including recent treaties such as India-Lithuania (2011) India-Nepal (2011) Korea-Panama (2010) and treaties with OECD members such as India-Sweden, India-UK, Mexico-UK, and Sri Lanka-US. In all of those cases, countries should be free to implement UT in accordance with the analysis set out above.

Nor does the argument from customary international law impede such effort. The argument is based on the contention that because SA and the

ALS are embodied in all of the treaties they should be considered binding. But embodiment in the treaties is not enough to create a customary international law ban on UT, since article 7(4) is embodied as well. The key issue is what countries actually do, and many of them follow UT approaches in practice. In addition, in this case countries should be free to follow the UN Model which does not adopt the changes made by the OECD, and which is also widely followed.

Finally, it can be argued that even the OECD may be revising its approach. The authorized OECD approach may have marked the high point of OECD commitment to SA. With the beginning of the BEPS project, which is influenced by large developing countries like China and India, it is likely that the OECD may be stepping back from its total commitment to SA. Specifically, the potential adoption under BEPS of country by country reporting (which is already required for extractive industries in the US) can be the basis for implementation of UT.

2. UT and Developing Countries

What can a developing country do to implement UT? If there is no treaty, or if the treaty contains Art. 7(4) type language, the biggest obstacle to implementation may be obtaining the information needed to apply UT.

The recent redraft of the UN Transfer Pricing Manual recommends that among the documentation which a tax administration should request for a Transfer Pricing audit should be the “Group global consolidated basis profit and loss statement and ratio of taxpayer's sales towards group global sales for five years” (para. 8.6.9.12). This provides a good basis for application of UT. The rejection of UT in the OECD Transfer Pricing Guidelines is based on its definition of FA as ‘applying a formula fixed in advance’. This leaves considerable scope for adoption of UT approaches with ad hoc formulas, which are not based on a fixed formula.

Specifically, as discussed in Michael Durst’s work, allocation according to operating expenses would be clearer and easier to

administer, and most importantly would fit within the current rules of international tax. We have argued that in the context of the profit split method, the residual profit cannot be allocated on the basis of comparables and therefore can be allocated based on operating expenses without deviating from the ALS. This would entail first assigning to each country an estimated market return on the tax deductible expenses incurred by the multinational group in that country.

Developing countries should therefore be encouraged to draft their transfer pricing laws to include powers to adjust the accounts of any foreign-owned local company or branch, if the Revenue Authority considers that its accounts do not fairly reflect the profits earned locally, to bring the taxable profits into line with those which such a business would be expected to earn, having regard to (a) similar businesses either in that country or elsewhere, and/or (b) the relationship of the local business to the worldwide activities of the corporate group of which it is a part. This would involve analysis and comparison of provisions in the tax laws of appropriate countries.

The transition from SA to UT is likely to be a long process, and it may require ultimately renegotiating the treaties or even drafting a multilateral treaty like the EU's CCCTB. However, a good beginning can be made now by exploring how developing countries can adopt UT principles within the context of the existing treaty network. This paper has tried to show that such approaches are quite feasible because most developing countries are not bound by the authorized OECD approach to article 7, and because even the OECD may be reconsidering its approach in the context of the BEPS project.

Appendix A

CONTRACTING STATES	DATE	ADOPTED VERSION OF ARTICLE 7: 7-4 LANGUAGE
INDIA &		
Japan	March 7, 1989	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
New Zealand	Oct. 17, 1986	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Singapore	Jan. 24, 1994	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Israel	Jan. 26, 1996	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Kuwait	June 15, 2006	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Lithuania	July 26, 2011	Art. 31 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Luxemburg	June 2, 2008	Art. 32 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Mexico	Sept. 10, 2007	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Mozambique	Sept. 30, 2010	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Myanmar	April 2, 2008	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Namibia	Feb. 15, 1997	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Nepal	Nov. 27, 2011	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Norway	Dec. 31, 1986	Art. 31 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Oman	April 2, 1997	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Philippines	Feb. 12, 1990	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Taiwan	July 12, 2011	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Serbia & Montenegro	Feb. 8, 2006	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Sri Lanka	Jan. 27, 1982	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Sweden	June 7, 1988	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Syria	June 18, 2008	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Tajikistan	Nov. 20, 2008	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Tanzania	May 27, 2011	Art. 31 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Thailand	Mar. 22, 1985	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Kingdom	Jan. 25, 1993	Art. 30 “...nothing in paragraphs (1) and (2) of this Article shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be necessary ...”

Ukraine	April 7, 1999	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Vietnam	Sept. 7, 1994	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
INDONESIA &		
Netherlands	Mar. 5, 1973	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Switzerland	Aug. 29, 1988	Art. 25 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Iran	April 30, 2004	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Japan	Mar. 3, 1982	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Kuwait	April 23, 1997	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Mauritius	Dec. 10, 1996	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Mexico	Sept. 6, 2002	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Korea	July 11, 2002	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
New Zealand	Mar. 25, 1987	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Philippines	June 18, 1981	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Poland	Oct. 6, 1992	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Portugal	July 9, 2003	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Slovakia	Oct. 12, 2000	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Syria	June 7, 1997	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Thailand	Mar. 25, 1981	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Tunisia	May 13, 1992	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Arab Emirates	Nov. 30, 1995	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Kingdom	April 5, 1993	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Ukraine	April 11, 1996	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Venezuela	Feb. 27, 1997	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Vietnam	Dec. 22, 1997	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Zimbabwe	May 30, 2001	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
KOREA &		

Syria	Feb. 21, 2000	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Mexico	Oct. 16, 1994	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Malta	Mar. 25, 1997	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Romania	Oct. 11, 1993	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Sri Lanka	May 28, 1984	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Switzerland	Feb. 12, 1980	Art. 26 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Tunisia	Sept. 27, 1988	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Ukraine	Sept. 29, 1999	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Russia	Sept. 26, 1997	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Myanmar	Feb. 22, 2002	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Oman	Sept. 23, 2005	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Panama	Oct. 20, 2010	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Slovakia	Aug. 27, 2001	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Slovenia	April 25, 2005	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Thailand	Nov. 16, 2006	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Arab Emirates	Sept. 23, 2003	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Venezuela	June 26, 2006	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
MEXICO &		
Netherlands	Sept. 27, 1993	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Singapore	Nov. 9, 1994	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Switzerland	Aug. 3, 1993	Art. 26 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Kingdom	June 2, 1994	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Norway	Mar. 23, 1995	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Poland	Nov. 30, 1998	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Portugal	Nov. 11, 1999	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Romania	July 20, 2000	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Russia	June 7, 2004	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Slovakia	May 13, 2006	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Spain	July 24, 1992	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Sweden	Sept. 21, 1992	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Ukraine	Jan. 23, 2012	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Venezuela	Feb. 6, 1997	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
MOROCCO &		
Pakistan	May 18, 2006	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Poland	Oct. 24, 1994	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Portugal	Sept. 29, 1997	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Romania	Sept. 11, 1981	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Singapore	Jan. 9, 2007	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Switzerland	Mar. 31, 1993	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Ukraine	July 13, 2007	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
NETHERLANDS&		
Norway	Nov. 13, 1989	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
New Zealand	Oct. 15, 1980	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

South Africa	Mar. 15, 1971	Art. 31 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Slovakia	Mar. 4, 1974	Art. 31 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Venezuela	May 29, 1991	Art. 31 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Oman	Oct. 5, 2009	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Pakistan	Mar. 24, 1982	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Panama	Oct. 6, 2010	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Poland	Sept. 20, 1979	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Portugal	Sept. 20, 1999	Art. 32 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Qatar	April 24, 2008	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Taiwan	Feb. 27, 2001	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Romania	Mar.5, 1998	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Saudi Arabia	Oct. 13, 2008	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Slovenia	June 30, 2004	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Sri Lanka	Nov. 17, 1982	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Arab Emirates	May 8, 2007	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Uganda	Aug. 31, 2004	Art. 31 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Venezuela	May 29, 1991	Art. 31 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Vietnam	Jan. 24, 1995	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Zambia	Dec. 19, 1977	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Zimbabwe	May 18, 1989	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
PHILIPPINES&		
Poland	Sept. 9, 1992	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Qatar	Dec. 14, 2008	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Romania	May 18, 1994	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Russia	April 26, 1995	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Singapore	Aug.1, 1997	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
ROMANIA&		
San Marino	May 23, 2007	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Switzerland	Oct. 25, 1993	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Qatar	Oct. 24, 1999	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Yugoslavia	May 16, 1996	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Russia	Sept. 27, 1993	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
RUSSIA&		
Switzerland	Nov. 15, 1995	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Yugoslavia	Oct. 12, 1995	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Slovenia	Nov. 29, 1995	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Sri Lanka	Mar. 2, 1999	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Syria	Sept. 17, 2000	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Thailand	Sept. 23, 1999	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Venezuela	Sept. 22, 2003	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Vietnam	May 27, 1993	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
SAUDI ARABIA&		
Ukraine	Sept. 2, 2011	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Vietnam	April 10, 2010	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
SERBIA &		

Slovenia	June 11, 2003	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Spain	Mar. 9, 2009	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Turkey	Oct. 12, 2005	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Arab Emirates	Jan 13, 2013	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
SOUTH AFRICA &		
Switzerland	July 3, 1967	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Ukraine	Aug. 28, 2003	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
SRI LANKA &		
United Kingdom	June 21, 1979	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United States	Mar. 14, 1985 As amended by 2002 protocol	Although this paragraph is not included in the U.S. Model, this is not a substantive difference because the result provided by paragraph 4 is consistent with the rest of Article 7. The U.S. view is that paragraphs 2 and 3 of Article 7 authorize the use of total profits methods independently of paragraph 4 of Article 7 of the OECD Model because total profits methods are acceptable methods for determining the arm’s length profits of affiliated enterprises under Article 9. Accordingly, it is understood that, under paragraph 2 of the Convention, it is permissible to use methods other than separate

		accounting to estimate the arm's length profits of a permanent establishment where it is necessary to do so for practical reasons, such as when the affairs of the permanent establishment are so closely bound up with those of the head office that it would be impossible to disentangle them on any strict basis of accounts.
Sweden	Feb. 23, 1983	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Switzerland	Jan. 11, 1983	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Thailand	Dec. 14, 1988	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Arab Emirates	Sept. 24, 2003	Art. 31 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Kingdom	June 21, 1979	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Vietnam	Oct. 26, 2005	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
SUDAN &		
United Arab Emirates	Mar. 18, 2001	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
SWEDEN &		

Tanzania	May 2, 1976	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Thailand	Oct. 19, 1988	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Trinidad and Tobago	Feb. 1984	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Tunisia	May 7, 1981	Art. 26 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Ukraine	Aug. 14, 1995	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Venezuela	Sept. 8, 1993	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Vietnam	Mar. 24, 1994	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Zambia	Mar. 18, 1974	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Zimbabwe	Mar. 10, 1989	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
TAIWAN &		
Thailand	July 9, 1999	Art. 26 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Vietnam	April 13, 1998	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
MONGOLIA &		
Poland	April 18, 1997	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Singapore	Oct. 10, 2002	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Switzerland	Sept. 20, 1999	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Thailand	Aug. 17, 2006	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Arab Emirates	Feb. 21, 2001	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

United Kingdom	April 23, 1996	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Ukraine	July 1, 2002	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Vietnam	May 9, 1996	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
MAURITIUS &		
Oman	Mar. 30, 1998	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Singapore	Aug. 19, 1995	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Sweden	April 23, 1992	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Zimbabwe	Mar. 6, 1992	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
MALAYSIA &		
United Kingdom	Dec. 10, 1996	Art. 30 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”

Mauritius	Aug. 23, 1992	Art. 26 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Syria	Feb. 26, 2007	Art. 29 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Turkmenistan	Nov. 19, 2008	Art. 27 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
United Arab Emirates	Nov. 28, 1995	Art. 28 “... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
Yugoslavia	April 24, 1990	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”
KENYA & Thailand	Dec. 26, 2006	“... nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary...”